GENERAL FUND TAXES

1. GENERAL FUND TAX CHANGES

The following table outlines the general fund tax changes recommended by the Governor, Joint Committee on Finance and Legislature along with the estimated fiscal effect in the 2001-03 biennium. The final column shows the tax changes under Act 16, which includes the impact of the Governor's partial vetoes. The items relating to expansion of the integrated tax system are summarized under "Revenue--Tax Administration." It should also be noted that certain tax changes that will have a fiscal effect in future years are not shown in the table because they will not affect revenues in the 2001-03 biennium. Included among these items are a temporary reduction in the gross receipts tax on wholesale sales of electricity and the creation of new tax credits for businesses operating in an agricultural development zone, technology zones and development opportunity zones in the Cities of Beloit and Milwaukee.

2001-03 General Fund Tax Changes--Biennial Fiscal Effects (In Millions)

	Governor	Joint Finance	Legislature	Act 16
Individual Income Tax				
Integrated Tax System	$17.83	$17.83	$17.83	$17.83
Correct Bracket Indexing	-0.45	-0.75	-0.75	-0.75
Offsets Against Federal Rebates	0.00	4.50	4.50	4.50
Exempt Military Pensions	0.00	0.00	-8.40	-9.00
Corporate Income and Franchise Tax				
Single Sales Factor Apportionment	-8.00	0.00	0.00	0.00
Limited Liability Company Members	12.50	12.50	12.50	12.50
Integrated Tax System	2.02	2.02	2.02	2.02
Internal Revenue Code Update	0.00	0.20	0.20	0.00
Sales and Excise Taxes				
Customized Software	52.00	51.50	0.00	0.00
Integrated Tax System	12.45	12.45	12.45	12.45
Increase Cigarette Tax	0.00	66.00	130.50	130.50
Increase Tobacco Products Tax	0.00	11.10	5.55	5.55
Exemption for Water Slides	0.00	0.00	-0.21	0.00
Exemption for Flags	0.00	0.00	-0.24	-0.24
Other Taxes				
Assessments of Teleco. Property	-0.02	-0.02	-0.02	-0.02
Estate Tax	0.00	0.00	-29.00	-29.00
Total	$88.33	$177.33	$146.93	$146.34

Individual and Corporate Income Taxes

1. TAX RELIEF FUND TAX CREDIT [LFB Paper 242]

Governor: Create a nonrefundable individual income tax credit for the purpose of returning moneys from the tax relief fund to taxpayers when the fund exceeds $25,000,000.

Under the bill, certain monies would be deposited in the tax relief fund in the event that actual general fund tax revenues exceed estimated collections. The amounts in the tax relief fund would be returned to taxpayers through the tax relief fund tax credit. The provisions pertaining to the tax relief fund are described in this document under the section on "Budget Management and Compensation Reserves."

The bill would provide that, no later than September 1 of each year, the Secretary of the Department of Administration (DOA) would certify to the Secretary of the Department of Revenue (DOR) the amount in the tax relief fund. If the certified amount exceeded $25,000,000, DOR would be required to determine a tax relief fund tax credit amount that could be claimed by taxpayers for the taxable year. No tax relief fund credit would be available if the certified amount were $25,000,000 or less.

For example, under these provisions, DOA would certify to DOR by September 1, 2002, the amount, if any, in the tax relief fund. If the certified amount exceeded $25,000,000, DOR would determine the tax relief fund tax credit that could be claimed by taxpayers when filing returns for tax year 2002, (due in April, 2003). If the certified amount in the tax relief fund on September 1, 2002, were less than $25,000,000, no tax relief fund credit would be available to taxpayers for tax year 2002.

Under the bill, when a tax relief fund tax credit is to be made available to taxpayers, DOR would be required to divide the total certified amount in the fund by the sum of all claimants (taxpayers), spouses of claimants (in the case of joint returns) and claimants' dependents to determine a credit per unit. (However, no credit could be claimed on tax returns filed by individuals who are dependents of other taxpayers.) The bill would direct DOR to modify the credit per unit so that as much of the total certified amount would be expended as possible. In addition, the bill would require the unit amount to be rounded down to the nearest whole dollar. No later than August 15 of the year following a year for which there has been a tax relief fund credit, DOR would be required to determine and certify to the Secretary of DOA the amount of revenue lost because of such credits claimed against individual income taxes.

With certain exceptions, no credit would be allowed unless it was claimed within four years of the unextended due date of the individual income tax return for the taxable year in which a tax relief fund credit was available. Part-year residents and nonresidents would not be eligible for the tax relief fund credit. The bill would provide that income tax provisions under Chapter 71 of the statutes relating to assessments, refunds, appeals, collection, interest and

penalties would apply to the tax relief fund tax credit. DOR would be authorized to enforce the credit and take any action and conduct any proceeding as otherwise authorized under Chapter 71.

The provisions on the tax relief fund tax credit would first apply to taxable years beginning on January 1 of the year in which the bill generally takes effect, unless the bill's general effective date is after July 31. In that case, these provisions would first apply to taxable years beginning January 1 of the following year. No fiscal effect is estimated because the credit would be provided only if actual general fund tax revenues significantly exceeded estimates.

Joint Finance: Modify the provision to specify that the credit would be made available if the amount in the tax relief fund were certified to exceed $100,000,000 (rather than $25,000,000, as proposed by the Governor).

The Joint Finance provisions would also specify that the first $115,000,000 available to transfer to the tax relief fund would instead be used to buy back the payment delay of the June, 2003, school aids payment to July, 2003. The payment delay and the buy back provisions are described in this document under "Public Instruction--General School Aids."

Senate/Legislature: Delete all provisions relating to the creation of a tax relief fund and a tax relief fund tax credit.

2. INDEXING TOP BRACKET [LFB Paper 100]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	- $450,000	- $300,000	- $750,000

Governor: Modify the indexing adjustment for the top individual income tax bracket for tax year 2002 and thereafter.

The 1997-99 biennial budget (1997 Wisconsin Act 27) provided for indexing of the three income tax brackets for changes in inflation, beginning with tax year 1999. Act 27 specified that the maximum income amount in the lowest and middle tax brackets, and the corresponding minimum dollar amounts in the middle and top tax brackets, were to be adjusted for annual changes in the consumer price index (CPI). The adjustment for the applicable tax year would be the change in CPI for the previous year over 1997.

Under the 1999-01 biennial budget (1999 Wisconsin Act 9), a fourth income tax bracket was created, beginning in tax year 2000. Act 9 established the ceilings for the third bracket (and the corresponding floors for the fourth bracket), and provided that those levels would be indexed for inflation, starting in 2001. Under the language in Act 9, the calculation of the ceilings for the top bracket for 2000 was based on changes in the CPI over 1997, but for 2001 and thereafter, the reference was to the change in the CPI over 1999. While the intention was to

adjust the brackets upward for increases in inflation, the actual effect was that the ceilings for the top bracket were lower for 2001 than for 2000.

The bill would specify that, for tax year 2002 and thereafter, the ceilings for the top bracket would be indexed to the change in CPI from 1997, rather than from 1999, as is the case for the other brackets and as would be consistent with the treatment of the ceilings for the top tax bracket for tax year 2000. It is estimated that this provision would reduce general fund tax collections from the individual income tax by $450,000 in 2002-03.

Joint Finance/Legislature: Reestimate the fiscal effect of the provision as a decrease in individual income tax collections in 2002-03 of $750,000. Compared to the bill, the revised estimate would reduce general fund tax collections by $300,000 in 2002-03.

[Act 16 Section: 2145]

3. INDIVIDUAL INCOME TAX EXCLUSION FOR MILITARY PENSIONS

	Legislature (Chg. to Base)	Veto (Chg. to Leg)	Net Change
GPR-REV	- $8,400,000	- $600,000	- $9,000,000

Assembly/Legislature: Provide that all federal uniformed services retirement benefits, other than surviving spouse benefits, would be excluded from taxation under the state's individual income tax, effective with tax year 2002.

Under current state law, all pension payments received by taxpayers who were members of or retired from certain public pension systems prior to 1964 are excluded from taxation. The current law exclusion applies to federal civilian and military retirement systems. Under the budget provision, all payments received from the U.S. military employee retirement system not excluded under current law would be exempt from taxation starting with tax year 2002. In addition, the budget provision would exempt all retirement payments received by an individual from the U.S. government that relate to the individual's service with the Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the Public Health Service. It is estimated that general fund tax revenues would be reduced by $8,400,000 in 2002-03 and annually thereafter.

Veto by Governor [F-8]: Delete the provision that would exclude surviving spouse benefits from the income tax exclusion for military pensions. Compared to the enrolled bill passed by the Legislature, this would decrease general fund tax revenues by an estimated $600,000 in 2002-03

[Act 16 Sections: 2142m, 2142n and 9344(9c)]

[Act 16 Vetoed Sections: 2142m and 2142n]

4. INCOME TAX DEDUCTION FOR HEALTH INSURANCE PREMIUMS

Assembly: Provide an income tax deduction for 100% of amounts paid by certain individuals for health insurance for the individual, the individual's spouse and dependents.

Currently, state law provides a 100% income tax deduction for health insurance costs of self-employed taxpayers and a 50% deduction for employees whose employer pays no amount of money toward the employee's medical insurance. In addition, payments by individuals for health insurance are eligible expenses for determining the state's itemized deduction credit. [The itemized deduction credit is an individual income tax credit for 5% of the excess of allowable itemized deductions over the sliding scale standard deduction. Allowable deductions conform to certain deductions permitted as federal itemized deductions, including health care premiums.]

The budget provision would increase the current law 50% deduction for health insurance paid by an employee whose employer pays no amount of money toward the employee's medical insurance to 100%. In addition, the provision would create a 100% deduction for health insurance premiums paid by an individual who has no employer. The proposed changes to the health insurance deductions would not apply in the case of self-employed individuals, who are eligible for a 100% deduction under current law. For non- and part-year residents, the deduction would be pro-rated, based on the proportion of income in the state. Any amounts deducted under the provision would be excluded as eligible expenses under the state's itemized deduction credit. As under current law, no deduction (other than through the itemized deduction credit) would be available for out-of-pocket expenditures on health insurance premiums by an individual whose employer pays some amount toward the individual's medical insurance.

These provisions would first apply to taxable years beginning on January 1, 2002. It is estimated that general fund tax collections would be reduced by $3,900,000 in 2002-03.

Conference Committee/Legislature: Delete provision.

5. INDIVIDUAL INCOME TAX EXCLUSION FOR SOCIAL SECURITY BENEFITS

Assembly: Provide that social security benefits would be completely excluded from taxation under the individual income tax, effective with tax year 2003.

Currently, Wisconsin follows pre-1994 federal law and taxes up to 50% of social security benefits for taxpayers with provisional income above the following thresholds: $25,000 if single, $32,000 if married-joint and zero if married-separate. The taxable portion is the lesser of: (a) one-half of net social security benefits; or (b) one-half of the amount by which provisional income exceeds the threshold amount. Provisional income is defined as one-half of social security plus federal adjusted gross income, tax-exempt interest and other specified amounts that are

excluded from gross income. No benefits are taxed for taxpayers with provisional income below these threshold amounts.

As the provision would first apply to tax year 2003, there is no estimated effect in the 2001-03 biennium. However, it is estimated that individual income tax revenues would be reduced by $93,100,000 per year (in 2002-03 dollars), beginning in 2003-04.

Conference Committee/Legislature: Delete provision.

6. PROPERTY TAX/RENT CREDIT

Senate: Modify the property tax/rent credit (PTRC) to equal 13.3% of the first $2,000 ($1,000 for a married person filing separately) in property taxes or rent constituting property taxes, beginning with tax year 2001. The maximum credit would be $266.

Under current law, the PTRC is 12% of the first $2,500 in property taxes or rent constituting property taxes, with a maximum credit of $300. The modification would increase income tax revenues by an estimated $1,700,000 in 2001-02 and $1,800,000 in 2002-03. Based on the 1999 Wisconsin tax sample, 38.4% of taxpayers in 1999 would have a tax decrease, averaging $14, while 19.9% of taxpayers would have a tax increase, averaging $31.

Conference Committee/Legislature: Delete provision.

7. ARTISTIC ENDOWMENT FOUNDATION TAX CREDIT

Senate: The Joint Committee on Finance approved provisions that would create an Artistic Endowment Foundation. Modify the provisions as follows: (a) provide a nonrefundable individual income tax credit for 25% of amounts contributed to the artistic endowment fund, up to a maximum contribution of $50 [$100 for married couples filing joint returns]; and (b) provide a nonrefundable tax credit under the corporate income and franchise tax for 25% of amounts contributed to the artistic endowment fund, up to a maximum contribution of $500.

Provide the credits for taxable years beginning after December 31, 2002. Specify that no new credits could be claimed for taxable years beginning after a year in which revenues in the artistic endowment fund equaled or exceeded $50,150,000.

In addition, specify that the amount of the individual income tax credit for contributions to the artistic endowment fund would not be includable as an eligible expense under the state's itemized deduction credit. Specify that the credit would not be available to nonresidents and, for part-year residents, would be based on the proportion of total income earned in Wisconsin.

Require the Department of Revenue to include a statement on the relevant tax forms that a taxpayer could reduce a refund or increase a liability payment and deposit the proceeds in the artistic endowment fund.

As the tax credit would first apply to tax years beginning after December 31, 2002, there would be no fiscal effect in the 2001-03 biennium. Based on simulations with the 1999 Wisconsin tax sample and information on current charitable contributions to the arts, culture and humanities, it is estimated that the proposed artistic endowment fund tax credit would reduce individual and corporate income and franchise tax collections by approximately $4,800,000 per year (in 2002-03 dollars) for the duration of the credit.

Conference Committee/Legislature: Adopt the Senate provision, with a modification to specify that the credit would be 10% of amounts contributed to the artistic endowment fund, up to the specified maximum eligible contributions. Under these provisions, the maximum credit that could be claimed by an individual would be $5 ($10 in the case of married couples filing joint returns). The maximum credit for a corporation would be $50.

As the tax credit would first apply to taxable years beginning after December 31, 2002, there would be no fiscal effect in the 2001-03 biennium. However, it is estimated that the credit would reduce individual income and corporate income and franchise tax collections by approximately $2,000,000 per year (in 2002-03 dollars), for the duration of the credit.

Veto by Governor [F-10]: Delete provision.

[Act 16 Vetoed Sections: 2148m, 2150d, 2150t, 2175, 2179d, 2179h, 2193d, 2193h and 2205n]

8. INDIVIDUAL INCOME TAX DEDUCTION FOR COLLEGE SAVINGS PROGRAMS

Assembly: Expand the current law individual income tax deductions for certain parental contributions to the state's college tuition and expenses program and the college savings program to include such contributions by a beneficiary's grandparents. In addition, limit the combined deduction per beneficiary by a contributor to the two programs to the maximum deduction allowed to a contributor under either program individually.

Under current law, Wisconsin exempts qualified contributions to and earnings from the college tuition and expenses program and the college savings program. The programs are similar in that they help program participants save for future college expenses. Earnings from the college tuition and expenses program have been tax exempt since 1997. Effective with tax year 2001, a deduction of up to $3,000 per beneficiary may be claimed for amounts paid by a claimant into each program. The beneficiary must be the claimant or the claimant's dependent child in order for the deduction to apply.

Under the budget provisions, a claimant's annual deduction limit per beneficiary under the college tuition and expenses program and the college savings program, which is the same limit for each program, would also be the combined deduction limit. For example, under current law, a parent could claim a $3,000 deduction for contributions on behalf of a dependent child to the college tuition and expenses program in one year and a $3,000 deduction for contributions on behalf of the same child to the college savings program in the same year, for a total deduction of up to $6,000. The budget provisions would limit the parent to a maximum deduction of $3,000 total, even if the parent contributed $3,000 under each program.

The budget provisions would also expand eligible claimants to include a beneficiary's grandparents. The maximum annual deduction for contributions by grandparents on behalf of a single grandchild (to the programs individually and in combination) would be $1,500 per grandparent. However, in the case of a grandparent whose spouse has died, the deduction limit would be $3,000.

These provisions would first apply to tax year 2001, unless the bill generally becomes effective after July 31, 2001. In that case, the provisions would first apply to tax year 2002. It is estimated that the fiscal effect would be minimal. This estimate is based on the assumption that the impact of providing an income tax deduction for certain contributions by grandparents would be offset by the impact of restricting the existing deduction for parents to a combined total for the two programs.

Conference Committee/Legislature: Delete provision.

9. EARNED INCOME TAX CREDIT -- CURRENT LAW REESTIMATE [LFB Paper 101]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	- $910,000	- $334,500	- $1,244,500
PR	- 3,090,000	- 1,465,500	- 4,555,500
Total	- $4,000,000	- $1,800,000	- $5,800,000

Governor: Reduce funding for the earned income tax credit (EITC) by the following amounts: (a) $744,500 GPR and $2,755,500 PR in 2001-02; and (b) $165,500 GPR and $334,500 PR in 2002-03. Total funding would be $63,500,000 in 2001-02 ($12,255,500 GPR and $51,244,500 PR) and $66,500,000 in 2002-03 ($12,834,500 GPR and $53,665,500 PR). The program revenue is federal temporary assistance for needy families (TANF) funding transferred from the Department of Workforce Development to pay the refundable portion of the EITC. The estimates are based on the assumption that approximately 80% of EITC payments will be refunded to TANF-eligible individuals.

Joint Finance/Legislature: Reestimate funding for the EITC under current law for 2002-03 at $64,700,000 ($12,500,000 GPR and $52,200,000 PR). Compared to the bill, the revised

estimate reduces funding for the second year by $334,500 GPR and $1,465,500 PR, for a total reduction of $1,800,000. Federal TANF funding in DWD would also be reduced by $1,465,500.

10. OTHER STATE TAX CREDIT

Governor/Legislature: Provide that the individual income tax credit for income taxes paid to other states would be expanded to include otherwise qualified resident partners of a partnership that pays taxes to another state. Specify that this provision would first apply to taxable years beginning on January 1 of the year in which the bill generally takes effect, unless the bill's general effective date is after July 31. In that case, the provision would first apply to taxable years beginning January 1 of the following year.

Under current law, if a resident individual, estate or trust pays a net income tax to another state, that individual, estate or trust may credit the net tax paid to another state on that income against the income tax otherwise payable to Wisconsin on income of the same year. [The credit is only allowed if the income taxed by another state is also considered income for Wisconsin tax purposes and, with certain exceptions, if the credit is claimed within four years of the unextended due date of the Wisconsin tax return.] In addition, income and franchise taxes paid to another state by a tax-option corporation or a limited liability company (LLC) that is treated as a partnership may be claimed as a credit by that corporation's shareholders or that LLC's members who are residents of this state and who otherwise qualify. The bill would provide that a partnership's partners could similarly claim a credit for net income taxes paid by the partnership to another state.

The administration estimates that the fiscal effect of this provision would be minimal.

[Act 16 Sections: 2149 and 9344(8)]

11. TAXATION OF TRUSTS

Governor/Legislature: Modify current law as it relates to individual income taxes imposed on inter vivos trusts (trusts created by a living person).

The state imposes the individual income tax on an inter vivos, irrevocable trust that is "resident" in this state. [A trust is irrevocable if the person whose property constitutes the trust does not have the power to revest the property.]

Under current law, inter vivos trusts that were made irrevocable before October 29, 1999, are generally considered "resident" at the place where the trust is administered. For such trusts, the trust is therefore taxable if it is administered in the state and not taxable if it is administered elsewhere. Inter vivos trusts made irrevocable on or after October 29, 1999, are resident (and therefore taxable) if the grantor is a resident of the state at the time the trust is made irrevocable, regardless of where the trust is administered.

The bill would modify current law in the case of an inter vivos trust that was made irrevocable before October 29, 1999, but was first administered in this state after October 29, 1999. For such a trust, the trust would be resident (and therefore taxable) only if the grantor of the trust was a resident of the state at the time the trust was made irrevocable in this state, regardless of where the trust is currently administered. The bill would also correct a reference error in these provisions under current law. These provisions would first apply retroactively to tax years beginning on January 1, 1999. The administration estimates that the fiscal effect would be minimal.

[Act 16 Sections: 2154 thru 2156 and 9344(19)]

12. ILLINOIS-WISCONSIN INCOME TAX RECIPROCITY PAYMENTS [LFB Paper 102]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	$24,250,000	- $101,400	$24,148,600

Governor: Provide $11,750,000 in 2001-02 and $12,500,000 in 2002-03 to reflect estimated Illinois-Wisconsin income tax reciprocity payments. Total funding after these adjustments would be $11,800,700 in 2001-02 and $12,550,700 in 2002-03. However, it should be noted that these amounts have been placed in the wrong appropriation and that the administration indicates that they are overstated by $50,700 in each year.

Joint Finance/Legislature: Reduce the amounts in the appropriation for the Illinois-Wisconsin income tax benchmark study by $11,750,000 in 2001-02 and $12,500,000 in 2002-03 and specify that these amounts would, instead, be provided under the sum sufficient appropriation for Illinois income tax reciprocity payments. In addition, eliminate base funding of $50,700 in each year for the Illinois-Wisconsin income tax benchmark appropriation. The net effect would be a reduction of $50,700 in each year.

13. MINNESOTA-WISCONSIN INCOME TAX RECIPROCITY PAYMENTS

GPR	$15,000,000

Governor/Legislature: Provide $6,000,000 in 2001-02 and $9,000,000 in 2002-03 to reflect estimated Minnesota-Wisconsin income tax reciprocity payments. Total funding after these adjustments would be $50,000,000 in 2001-02 and $53,000,000 in 2002-03.

14. INTEREST ON OVERPAYMENT OF TAXES

GPR	$ 5,200,000

Governor/Legislature: Provide $2,600,000 in 2001-02 and in 2002-03 for estimated interest paid on the overpayment of individual income taxes. Total funding would be $3,500,000 in each year.

15. SALES TAX REBATE EXPENDITURE ADJUSTMENT [LFB Paper 123]

GPR-Balance	$11,700,000

Joint Finance/Legislature: Increase the estimated general fund opening balance for the 2001-03 biennium by $11,700,000. The amount recorded as being expended for the sales tax rebate during 1999-00 was approximately $11,700,000 higher than actual expenditures. An adjustment to be made during 2000-01 will increase the amounts available in the general fund by approximately $11,700,000.

16. BASEBALL PARK DISTRICT INCOME TAX CHECKOFF

Joint Finance/Legislature: Create an individual income tax checkoff for donations to a local professional baseball park district (Baseball District). Provide that the revenues from the individual income tax checkoff would be distributed to the Baseball District for the repayment of bonds.

Specify that provisions parallel to the current law provisions for a local professional football stadium district would apply in the case of the proposed Baseball District checkoff, including the following: (a) voluntary payments; (b) errors; (c) conditions; (d) void designation; (e) tax return; (f) certification; and (g) amounts subject to refund.

Specify that these provisions would first apply to taxable years beginning on January 1 of the year of the general effective date of the bill, unless the bill's general effective date is after July 31. In that case, the provisions would first apply to taxable years beginning January 1 of the year following the year in which the bill generally takes effect.

Veto by Governor [F-11]: Delete provision.

[Act 16 Vetoed Sections: 395 (as it relates to s. 20.566(1)(hp)), 917r, 2153g, 3037m, 3037n and 9344(8x)]

17. OFFSET OF DELINQUENT STATE TAXES [LFB Paper 122]

GPR-REV	$4,500,000

Joint Finance/Legislature: Increase estimated general fund revenues by $4,500,000 in 2001-02 to reflect delinquent state taxes withheld from federal income tax rebates.

The federal Economic Growth and Tax Relief Reconciliation Act of 2001 (which was signed into law on June 7, 2001) reduced the rate in the lowest income tax bracket from 15% to 10%, effective with tax year 2001. To accelerate the effect of the rate change, taxpayers that filed taxes for tax year 2000 will receive rebate checks, rather than having to wait until filing for tax year 2001. The amount of the rebate will be based on filing status and amounts taxed at the 15% bracket for tax year 2000, up to the following maximum rebate amounts; (a) $300 for a single individual; (b) $500 for the head of a household; and (c) $600 for a married couple filing a joint return. It is anticipated that most rebate checks will be issued in the first quarter of 2001-02. The rebate is in lieu of the 10% rate bracket for 2001. Individuals filing in 2001 that did not receive a rebate check will instead receive a credit against the tax liability for 2001.

The federal tax rebates are to be offset against certain delinquent accounts before being distributed to taxpayers. Under these provisions, a taxpayer's rebate would first be applied to federal income tax debts and debts to other federal agencies. After settling the federal debts, remaining rebate amounts could be used to offset delinquent state income tax liabilities. The Department of Revenue estimates that the state can expect to receive about $4,500,000 towards payment of delinquent accounts.

18. INTERNAL REVENUE CODE UPDATE TO FEDERAL LAW IN EFFECT ON DECEMBER 31, 2000 [LFB Paper 107]

	Jt. Finance/Leg. (Chg. to Base)	Veto (Chg. to Leg)	Net Change
GPR-REV	$200,000	- $200,000	$0

Joint Finance: Beginning in tax year 2001, with three exceptions, provide that state individual income and corporate and business tax provisions referenced to the federal Internal Revenue Code (IRC) would refer to the code in effect on December 31, 2000, rather than to December, 1999, as under current law.

Only one of the provisions adopted for state tax purposes is estimated to have a fiscal effect. This item would modify corporate and business tax provisions related to the duplication or acceleration of loss through assumption of certain liabilities. This provision would require that the basis of stock received in certain tax-free exchanges be reduced by the amount of any liability assumed in exchange for the stock that does not otherwise reduce the transferor's basis. Stock cannot be reduced below its fair market value. The provision would generally not apply if the trade or business with the liability or substantially all of the assets associated with the liability is transferred to the corporation in the exchange. This provision is effective for assumption of liabilities on or after October 19, 1999. The estimated fiscal effect is a revenue increase of $100,000 in 2001-02 and 2002-03.

The three federal law changes that would not be adopted relate to the deductions for environmental remediation costs and donations of computer equipment and the treatment of foreign sales corporations.

Assembly: Include deductions for environmental remediation costs and donations of computer equipment and the treatment of foreign sales corporations in referencing state individual and corporate income and franchise tax provisions to the federal Internal Revenue Code in effect on December 31, 2000. It is estimated that these provisions would reduce individual and corporate income and franchise tax revenues by $2,100,000 in 2001-02 and $3,050,000 in 2002-03.

Conference Committee/Legislature: Include Joint Finance provisions.

Veto by Governor [F-6]: Delete provisions. While the Legislature intended to omit three federal law changes (relating to deductions for environmental remediation costs and donations of computer equipment and the treatment of foreign sales corporations), as passed by the Legislature, the enrolled bill would have inadvertently excluded the three provisions for tax years prior to 2001 only. Therefore, the three provisions would have been adopted for 2001 and subsequent years, resulting in a reduction in state tax revenues estimated at $2,100,000 in 2001-02 and $3,050,000 in 2002-03. [These decreases were not reflected in the estimated tax revenues shown in the Chapter 20 General Fund Summary under Enrolled SB 55, as it was the Legislature's intent to exclude the provisions completely.] As compared to the estimates reflected in Enrolled SB 55, the fiscal effect of the veto is a decrease in general fund tax revenues of $100,000 in 2001-02 and 2002-03.

[Act 16 Vetoed Sections: 2130d thru 2130dt, 2158d thru 2158dzf, 2175d thru 2175dj, 2176d, 2182d thru 2182dw, 2184r, 9144(3z) and 9344(28z)]

19. INTERNAL REVENUE CODE UPDATE TO PROVISIONS UNDER NEW FEDERAL LAW THAT AFFECT TAX YEAR 2001

Assembly: Update state tax references to the federal Internal Revenue Code to adopt the provisions of the federal Economic Growth and Tax Relief Reconciliation Act of 2001 (Act) that affect tax year 2001. These provisions would include changes to the alternative minimum tax (AMT) exclusion amounts and to various other individual income tax and pension provisions.

Most of the components of the new federal law affect tax years after 2001. The provisions would be limited to those components of the new federal law that affect tax year 2001. [Conformity with these provisions beyond tax year 2001 and with other provisions of the Act could be considered as part of a subsequent IRC update.]

It is estimated that only one of the new federal provisions would have a fiscal effect. This item would increase the exemptions for the AMT as follows: (a) by $4,000 for married couples filing jointly, to $49,000; and (b) by $2,000 for other filers, to $35,750 for single and head-of-

household filers and to $24,500 for married persons filing separately. [Under current law, Wisconsin's AMT exemption amounts are the same as the federal amounts.] It is estimated that changes to the AMT exemptions would reduce individual income tax collections by $90,000 in 2001-02.

The remaining provisions would take effect after December 31, 2001. With this effective date, the impact on general fund tax collections in 2001-02 would be limited to fiscal year filers and is estimated to be minimal.

Conference Committee/Legislature: Delete provision.

20. CORPORATE INCOME AND FRANCHISE TAX -- SINGLE SALES FACTOR APPORTIONMENT FORMULA [LFB Paper 103]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	- $8,000,000	$8,000,000	$0

Governor: Phase in the use of a single sales factor apportionment formula to apportion to Wisconsin the income of corporations, including insurance companies, and nonresident individuals, and estates and trusts engaged in business within and outside of the state. Use of property and payroll to apportion income would be phased out. The apportionment formula is used to calculate a fraction or ratio that is applied to income to allocate a portion of it to the state for tax purposes. The phase-in of the single sales factor apportionment formula would be accomplished as follows:

a. *Corporations, Nonresident Individuals, Estates and Trusts in General.* For tax years beginning before January 1, 2003, income would be apportioned using the current apportionment formula with the sales factor representing 50% of the apportionment ratio, the property factor representing 25%, and the payroll factor representing 25%. For tax years beginning after December 31, 2002, and before January 1, 2004, the apportionment ratio would be calculated with the sales factor representing 60% of the apportionment ratio, the property factor representing 20%, and the payroll factor representing 20%. For tax years beginning after December 31, 2003, and before January 1, 2005, the apportionment ratio would be calculated with the sales factor representing 80% of the apportionment ratio, the property factor representing 10%, and the payroll factor representing 10%. For tax years beginning after December 31, 2004, a single sales factor apportionment formula would be used to apportion income to Wisconsin.

b. *Financial Institutions.* For tax years beginning before January 1, 2003, income would be apportioned using the current apportionment formula (specified by administrative rule) with a gross receipts factor representing 50% of the apportionment ratio and a payroll factor representing 50% of the apportionment ratio. For tax years beginning after December 31, 2002,

and before January 1, 2005, the apportionment ratio would be calculated with a sales factor that represented more than 50% of the apportionment ratio as determined by administrative rule by DOR. For tax years beginning after December 31, 2004, a single sales factor apportionment formula would be used to apportion income to the state as determined by administrative rule by DOR. The Department would be required to promulgate administrative rules governing the apportionment of the income of financial organizations and submit them to the Legislative Council by the first day of the fourth month beginning after the effective date of the bill.

c. *Insurance Companies.* The method used for calculating the Wisconsin net income of taxable insurers would be modified to use an apportionment ratio based on premiums and payroll in Wisconsin and to apply that ratio to federal total taxable income. Specifically, the premiums factor of the apportionment formula would be the ratio of direct premiums and assumed premiums written for reinsurance with respect to property and risks resident, located or performed in the state, divided by the total of such premiums everywhere. "Direct premiums" would be defined as direct premiums reported for the tax year on the annual statement required to be filed with the Commissioner of Insurance. "Assumed premiums" would be defined as assumed reinsurance premiums from domestic insurance companies reported for the tax year also on the annual statement required to be filed with the Commissioner of Insurance. The payroll factor would be the ratio of payroll in Wisconsin to total payroll everywhere. The arithmetic average of the premiums and payroll ratios would be applied to federal taxable income to determine Wisconsin net income.

Currently, income is apportioned to Wisconsin by first calculating the arithmetic average of the ratio of premiums outside Wisconsin to total premiums and the ratio of payroll outside Wisconsin to total payroll. This ratio is then applied to federal taxable income and the resulting amount is subtracted from federal taxable income to determine Wisconsin taxable income.

For tax years beginning before January 1, 2003, income would be apportioned with the premiums factor representing 50% of the apportionment ratio and the payroll factor representing 50%. For tax years beginning after December 31, 2002, and before January 1, 2004, income would be apportioned with the premiums factor representing 60% of the apportionment ratio and the payroll factor representing 40%. For tax years beginning after December 31, 2003, and before January 1, 2005, income would be apportioned with the premiums factor representing 80% of the apportionment ratio and the payroll factor representing 20%. For tax years beginning after December 31, 2004, income would be apportioned using only the premiums factor.

d. *Gas, Electric and Telecommunications Utilities.* These companies would be subject to the same apportionment provisions as corporations in general. Under current law, all public utilities are subject to apportionment under rules promulgated by DOR.

e. *Other Public Utilities.* Interstate railroads, motor carriers, air carriers, sleeping car, carline and pipeline companies would continue to apportion income under current law provisions.

The phase-in of using a single sales factor apportionment formula would reduce corporate income and franchise tax revenues by an estimated $8,000,000 in 2002-03. Once fully phased-in in 2005, these provisions would reduce tax revenues by an estimated $80,000,000 per year.

Under Wisconsin law, formula apportionment is used if a corporation's Wisconsin activities are an integral part of a unitary business which operates both within and outside of the state. In these cases, the corporation adds its total gross income from its in-state and out-of-state unitary activities, subtracts its deductions, and multiplies the amount of net income by its apportionment ratio as determined by the Wisconsin apportionment formula. The apportionment ratio is used to approximate how much of a corporation's total net income is generated by activities in Wisconsin.

The apportionment ratio is the end result of the application of the Wisconsin apportionment formula to a particular corporation. For most corporations, the apportionment ratio or fraction is based on three factors: property, payroll and sales. Specifically, the apportionment ratio is determined by adding three fractions--the corporation's property value in Wisconsin divided by its total property value, the corporation's payroll in Wisconsin divided by its total payroll and the corporation's sales in Wisconsin divided by its total sales--double weighting the sales factor, and dividing the aggregate sum by four. The current Wisconsin apportionment formula is illustrated below.

Computation of Apportionment Percentage
Under the Wisconsin Apportionment Formula

$$\text{Apportionment Percentage} = \left[\left[\frac{\text{Property in WI}}{\text{Total Property}} \right] + \left[\frac{\text{Payroll in WI}}{\text{Total Payroll}} \right] + 2 \left[\frac{\text{Sales by WI Destination}}{\text{Total Sales}} \right] \right] \div 4$$

The property factor of the apportionment formula is the ratio of the average value of real and tangible personal property owned or rented and used by the taxpayer in Wisconsin to that for the company as a whole. Tangible property includes land, buildings, machinery and equipment, inventories, furniture and fixtures and other tangible personal property actually owned and used in producing apportionable income. Property owned by the taxpayer is valued at its original cost adjusted for any improvements. Rented property is valued at eight times the net annual rent. Property used in the production of nonapportionable income must be excluded from the numerator and denominator of the property factor.

The payroll factor is the ratio of the total amount of compensation paid by the company in the state to the total compensation paid by the company. Compensation includes wages,

salaries, commissions and any other form of remuneration paid to employees for personal services. Compensation is considered to be paid in Wisconsin if: (a) the individual's service is performed entirely in Wisconsin; (b) the individual's service is performed within and outside of the state, but the service performed outside of the state is incidental to the service performed in Wisconsin; (c) a portion of the service is performed within the state and the individual's base of operations is in Wisconsin; (d) a portion of the service is performed within the state, and if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin; (e) the individual's residence is in Wisconsin and a portion of the service is performed within the state and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed; or (f) the individual is neither a resident of nor performs services in the state but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

The sales factor is the ratio of the total sales of the taxpayer in the state to total sales everywhere. Sales are generally all gross receipts from the course of the taxpayer's regular trade or business operations which produce apportionable business income. For the sales factor, sales of tangible personal property are generally considered to be in Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin or if the property is shipped from Wisconsin and the taxpayer is not subject to the taxing jurisdiction of the state of destination. The latter type of sales are "throwbacks" and single-weighted in the apportionment formula. In addition, sales of tangible personal property from an office in the state, but shipped from an out-of-state supplier to an out-of-state customer are considered throwback sales if neither the supplier nor the customer are subject to the taxing jurisdiction of the states in which they are located. Sales to the federal government are only considered to be in Wisconsin if they are shipped from a location within the state and are delivered to the federal government at a location within the state or if they are "throwback" sales. Federal throwback sales are single-weighted in the apportionment formula. Sales other than the sales of tangible personal property are usually considered to be in Wisconsin if the income-producing activity is performed wholly in Wisconsin. Generally, sales of intangible assets are excluded from the sales factor. Sales which produce nonapportionable income are also excluded from the sales factor.

Interstate air carriers, motor carriers, railroads, pipeline companies and financial organizations are required to use different apportionment formulas to determine Wisconsin net taxable income. These corporations must use special apportionment factors in order to attribute income to their Wisconsin business activities. Other public utilities are required to use the arithmetic average of the ratios of the regular three-factor formula to apportion income to the state. Thus, generally, public utility companies apportion income using the average of the ratios of payroll, property and sales in-state to total payroll, property and sales. The sales factor is not double-weighted.

Although most insurance companies that conduct business in the state are exempt from the state corporate income and franchise tax and, instead, pay the state insurance premiums tax, certain types of insurance companies are subject to the corporate franchise tax. Specifically, the state corporate franchise tax is imposed on most domestic nonlife insurance companies and on the nonlife insurance business of domestic life insurance companies. Domestic insurance corporations that are not engaged in the sale of life insurance but that have collected premiums written on property and risks located both in and outside of Wisconsin must allocate a portion of total adjusted federal income to the state. The allocation is accomplished by computing the average of: (a) the ratio of the company's payroll paid outside the state to total payroll paid everywhere; and (b) the ratio of the company's premiums written on property and risks located outside the state to total premiums written on property and risks located everywhere. The average ratio is then applied to adjusted federal income. This amount is subtracted from total adjusted federal income to arrive at Wisconsin net income before any offset for business loss carryforwards.

Domestic insurance companies that are engaged in the sale of both life insurance and other types of insurance must first determine the nonlife insurance portion of total adjusted federal income. As a first step in calculating Wisconsin net income these companies are required to multiply total adjusted federal income by the ratio of the company's net gain from its nonlife insurance operations to total net gain from operations (with specific exceptions). If this amount is from premiums written on property and risks located only in Wisconsin, then the amount represents Wisconsin net income (before business loss carryforward offsets). However, if the calculated nonlife insurance income is from premiums written on property and risks located both in and outside of the state, then Wisconsin net income is determined using the allocation method described above.

Under state law, the amount of tax that an insurance company pays under the state franchise tax cannot exceed 2% of gross Wisconsin premiums.

Joint Finance: Include provisions but delay the start of the phase-in of the use of single sales factor apportionment until tax years beginning after December 31, 2003. As a result, there would be no fiscal effect during the 2001-03 biennium. In addition, technical changes would be included that address computation of the sales factor when the numerator and denominator in the apportionment formula is negative or zero.

Senate: Delete provision.

Assembly: Restore provision, but begin to phase in the use of single sales factor apportionment starting with tax years that begin after December 31, 2002. Specify that, in the first year of the phase-in, the sales factor would represent 55% of the apportionment formula and the property and payroll factors would each represent 22.5% of the formula. The sales factor would be increased to 80% in the second year of the phase-in (tax years beginning after December 31, 2003, and before January 1, 2005) and to 100% in tax years beginning after December 31, 2004. This phase-in schedule would be the same as that recommended by the Governor, except that the sales factor would be 55% in the first year instead of 60%. Compared

to the Joint Finance provision, this modification would reduce general fund tax revenues by an estimated $4,000,000 in 2002-03.

Conference Committee/Legislature: Delete provision.

21. TAX TREATMENT OF CORPORATE PARTNERS AND LIMITED LIABILITY COMPANY MEMBERS [LFB Paper 104]

GPR-REV $12,500,000

Governor: Modify current corporate income and franchise tax provisions related to the tax treatment of corporations that are partners or members of limited liability companies as follows:

a. Define "doing business in this state" to include owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in the state or an interest in an LLC that does business in the state, regardless of the percentage of ownership.

b. Provide that, for state income and franchise tax purposes, a general or limited partner's share of the numerator and denominator of a partnership's apportionment factors would be included in the numerator and denominator of the general or limited partner's apportionment factors. Similarly, for an LLC treated as a partnership, a member's share of the numerator and the denominator of an LLC's apportionment factors would be included in the numerator and denominator of the member's apportionment factors.

These provisions would first apply to tax years for partners or LLC members that begin on January 1, 2001.

These provisions would increase corporate income and franchise tax revenues by an estimated $7,500,000 in 2001-02 and $5,000,000 in 2002-03. The higher figure in the first year includes one-time revenues of $2,500,000 from reconciling estimated and final tax payments.

Currently, the Wisconsin tax treatment of corporate partners and LLC members depends on whether or not the partnership or LLC is an extension of the corporation's business. If the partnership or LLC is an extension of the corporation's business, the corporation is considered to be doing business in Wisconsin as a result of that ownership interest. On the other hand, if the partnership or LLC is not an extension of the corporation's business, the corporation is not subject to Wisconsin taxation if its only connection to Wisconsin is that ownership interest. The Governor's provisions would make corporate partners and members of Wisconsin partnerships and LLCs, respectively, subject to taxation if they were doing business in Wisconsin regardless of the type of interest in the entity.

Joint Finance/Legislature: Include provisions and specify that owning an LLC would be considered doing business in the state only if the LLC is treated as a partnership for federal income tax purposes. This would clarify that an LLC treated as a corporation would be subject to tax as a separate entity just as a subsidiary corporation is.

[Act 16 Sections: 2158, 2173, 2190 and 9344(18)]

22. CORPORATE MEMBERS AND PARTNERS OF CORPORATE LIMITED LIABILITY COMPANIES AND PARTNERSHIPS

Governor/Legislature: Specify that the definition of "member" would not include a corporate member of an LLC treated as a corporation. In addition, the definition of "partner" would not include a partner of a publicly traded partnership treated as a corporation. These provisions would clarify that a corporate partner or member of another corporate entity would not be treated as a partner or member for the pass through of income, deductions, tax credits and apportionment factors. Rather, the corporate partnership or LLC would use the income, deductions, apportionment factors and tax credits to determine tax liability for the corporate partnership or LLC.

[Act 16 Sections: 2159, 2160, 2183 and 2184]

23. MILWAUKEE DEVELOPMENT OPPORTUNITY ZONE AND CAPITAL INVESTMENT CREDIT [LFB Paper 105]

Governor: Designate an area in the City of Milwaukee as a development opportunity zone. The Milwaukee development opportunity zone would exist for seven years, beginning with the effective date of the bill. Any corporation that conducted economic activity in the zone and that, in conjunction with the Common Council of the City of Milwaukee, submitted a project plan would be eligible to claim the development zone tax credit, the development zone investment credit and a development zone capital investment credit that would be created in the bill. The maximum amount of tax credits that could be claimed by businesses in the zone would be $4,700,000. (This provision is designed to provide assistance to Saks Fifth Avenue for the Grand Avenue Boston Store location in Milwaukee.)

As noted, in order to claim tax credits, a corporation that conducts or intends to conduct economic activity in the Milwaukee development opportunity zone would have to submit a project plan to Commerce, in conjunction with the Common Council. The project plan would have to include:

a. The name and address of the corporation's business for which tax benefits will be claimed.

b. The federal tax identification number of the business.

c. The names and addresses of other locations outside the development opportunity zone where the corporation conducts business and a description of the business activities at those locations

d. The amount the corporation proposes to invest in a business, or spend on the construction, rehabilitation, repair or remodeling of a building located in the development opportunity zone.

e. The estimated total investment of the corporation in the development opportunity zone.

f. The number of full-time jobs that would be created, retained or substantially upgraded as a result of the corporation's economic activity in relation to the amount of tax benefits estimated for the corporation.

g. The corporation's plan to make reasonable attempts to hire employees from the targeted population (public assistance recipients and other economically disadvantaged individuals).

h. A description of the commitment of the Milwaukee Common Council to the corporation's project.

i. Any other information required by Commerce or the Department of Revenue.

Commerce would be required to revoke the entitlement for tax credits of a corporation that: (a) supplied false or misleading information to obtain the tax benefits; (b) left the zone to conduct substantially the same business outside the development opportunity zone; or (c) ceased operations in the zone and did not renew the same or similar operations within 12 months. DOR would have to be notified within 30 days of a revocation.

Annually, Commerce would be required to estimate the amount of revenue that would be forgone due to tax credits claimed by businesses in the development opportunity zone. The zone would expire 90 days after the day on which Commerce determined that the amount of forgone revenue equaled or exceeded the tax credit limit. Commerce would be required to notify the Milwaukee Common Council of any change in the expiration date. Commerce would also be required to notify DOR of corporations entitled to claim the tax credits and to verify information submitted by claimants.

A business in the Milwaukee development opportunity zone would be eligible to claim a development zone investment credit, the development zone credit provided under current law and a newly created development zone capital investment credit.

Development Zone Capital Investment Credit. A new capital investment tax credit would only be available to a business in the Milwaukee development opportunity zone. The credit would equal 3% of the following:

a. *The purchase price of depreciable, tangible personal property*. To be eligible for the credit, the property would have to be purchased after the claimant was certified as eligible for tax benefits and the personal property would have to have at least 50% of its use in the claimant's business at a location in the development opportunity zone. If the property was mobile, the base of operations for at least 50% its use would have to be in the development opportunity zone.

b. *The amount expended to acquire, construct, rehabilitate, remodel, or repair real property in the development opportunity zone.* Expenses would be eligible for the credit if the claimant began the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a development opportunity zone. Expenses could be claimed for the credit if the completed project was placed in service after the claimant was certified as eligible for tax benefits. A credit could not be claimed for expenses for preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing the property to prevent deterioration.

A claimant could also claim a tax credit for amounts expended to acquire real property, if the property was not previously owned and the claimant acquired the property after the place where the property was located was designated a development opportunity zone or if the completed project was placed in service after the claimant was certified as eligible for tax benefits. Property would be considered previously owned if the claimant or a related party owned the property during the two years prior to Commerce designating the place where the property was located as a development opportunity zone. In addition, the property would have to be subject to the federal prohibition on the deductibility of losses on the sale or exchange of such property to related parties. However, the federal 50% ownership interest threshold for determining a related party would be eliminated so that any interest in another entity would make it a related party.

In calculating the capital investment credit for purchases of real property, a claimant would be required to reduce the amount expended to acquire the property by a percentage equal to the percentage of the area of the real property that is not used for the purposes for which the claimant is certified for tax benefits. Similarly, the amount expended for other purposes would be reduced by the amount expended on the part of the property not used for purposes for which the claimant is certified.

Partnerships, LLCs and S corporations could not claim the credit as an entity, but eligibility for, and the amount of credit, would be based on the entity's economic activity. Partners, members of LLCs, and shareholders of S corporations could claim the capital investment tax credit based on the entity's activities in proportion to their ownership interest. The corporation, partnership or limited liability company would be required to compute the amount of credit that could be claimed by each of the entity's shareholders, partners and members, respectively, and provide this information to them. The shareholders, partners and LLC members could use the credit to offset the tax attributable to their income from the

partnership's, company's or corporation's business operations in the development zone or their income from the entity's directly related business operations.

Credits that were not entirely used to offset income or franchise taxes in the current year could be carried forward up to 15 years to offset future tax liabilities. Internal Revenue Code provisions would govern the carry-forward of unused credits in cases where there was a change of ownership. Claimants would be required to include with their return: (a) Commerce verification that the claimant was eligible for tax credits; and (b) a statement from Commerce verifying the purchase price and eligibility of the investment. If a certification of eligibility for tax benefits was revoked, credits could not be claimed for the tax year in which the certification was revoked or for successive tax years, and unused credits could not be carried forward to offset tax liabilities for the year in which certification was revoked and succeeding years. In addition, credits could not be claimed for the year in which a person that was certified for tax benefits ceased business operations in a zone, and unused credit amounts could not be carried forward from that year or from previous years.

The Department of Revenue would administer credit claims and could take any action, conduct any proceeding and proceed as authorized under income and franchise tax provisions relating to timely claims, assessments, refunds, appeals, collection, interest and penalties. DOR would be authorized to deny any portion of a credit that was claimed if allowing the full credit would cause the total amount of credits claimed to exceed the maximum credit limit.

Development Zone Tax Credit. Under current law, eligible businesses which conduct economic activity in development or enterprise development zones may claim the development zone tax credit. A business in the Milwaukee development opportunity zone would be eligible for the tax credit. The credit is based on amounts spent on environmental remediation and the number of full-time jobs created or retained.

a. *Environmental Remediation Component.* A credit against income taxes due can be claimed for 50% of the amount expended for environmental remediation in a development, or enterprise development zone.

b. *Full-Time Jobs Component.* A credit of up to $8,000 against income and franchise taxes can be claimed for: (1) each full-time job created in a development or enterprise development zone and filled by a member of a targeted group; and (2) retaining a full-time job in an enterprise development zone if Commerce determines that a significant capital investment was made to retain the full-time job. In addition, a credit of up to $6,000 can be claimed for each full-time job created or retained in a development or enterprise development zone that is filled by a Wisconsin resident who is not a member of a targeted group.

Credits that are not entirely used to offset income or franchise taxes in the current year can be carried forward up to 15 years to offset future tax liabilities.

Investment Tax Credit. An eligible corporation in the Milwaukee development opportunity zone could claim a credit against income taxes due for 2.5% of the purchase price of

depreciable tangible personal property or 1.75% of the purchase price of depreciable tangible personal property that was expensed under section 179 of the IRC. Only taxes due on income generated by or directly related to business activities in the development opportunity zone could be offset by the credit. Unused credit amounts could be carried forward to offset future tax liabilities generated by activities in the development opportunity zone. However, if the business ceased operations in the zone, unused credit amounts could not be carried forward.

Tax Credits Claimed Based on the Economic Activity of Another. Commerce would be authorized to certify a person that was conducting economic activity in the development opportunity zone as eligible for claiming the available tax credits based on the economic activity of another person. (This is intended to address cases where a person developed a business location for lease to another business and the lessee business created jobs but could not claim the jobs component of the development zones credit.) In order for Commerce to certify a person as eligible for credits based on the economic activity of another person, the following would have to apply:

a. The person's (to be certified) economic activity was instrumental in enabling another person to conduct economic activity in the development opportunity zone.

b. Commerce determined that the economic activity of the other person would not occur without the involvement of the person to be certified.

c. The person to be certified for tax benefits would pass the tax benefits through to the other person conducting economic activity in the development opportunity zone.

d. The other person conducting economic activity in the zone would not claim tax benefits.

A person that intended to claim tax benefits based on the economic activity of another would be required to submit an application to Commerce, in the form prescribed by the Department, with information required by Commerce and by DOR. Commerce would be required to verify information submitted for tax credits and to notify DOR of all persons that were certified to claim tax credits.

Commerce would be required to revoke the certification for tax credits under this provision if it determined that the person: (a) supplied false or misleading information; (b) ceased operations in the development opportunity zone; or (c) did not pass tax benefits through to the other person conducting economic activity in the zone, as determined by Commerce. The Department would be required to notify DOR within 30 days of the revocation.

The tax credit provisions would first apply to tax years beginning on January 1 of the year in which the bill generally takes effect, unless the bill's effective date is after July 31. In that case, the provisions would first apply to tax years beginning on January 1 of the following year.

The administration has not provided an estimate of the amount of reduction in state individual and corporate income and franchise taxes that would result from the tax credit claims.

Currently, there is one development opportunity zone located in Kenosha.

Senate: Provide that the tax credits in the Milwaukee development opportunity zone created in the bill that are claimed based on the partnership's, LLC's or corporation's activities in proportion to their ownership interest may offset the tax attributable to their income.

Conference Committee/Legislature: Include Senate provision and adopt a technical amendment to clarify that noncorporate businesses in the zone could claim tax credits in the zone.

Veto by Governor [B-28]: Delete provisions that require that the tax credits could only be used to offset taxes on a claimant's income from business operations directly related to those in the zone. This would clarify that the tax credits could be used to offset all of the income of eligible businesses.

[Act 16 Sections: 2143, 2145m, 2145p, 2146, 2147k thru 2147t, 2152, 2157, 2175, 2176, 2176m, 2176p, 2177, 2178k, 2178m, 2178p, 2180, 2190m, 2190p, 2191, 2192k, 2192m, 2192p, 2194, 2203, 2248, 3700, 3701, 3702, 3703, 3703p, 3704, 3704e thru 3708 and 9344(9)&(10)]

[Act 16 Vetoed Sections: 2146, 2147p, 2177, 2178p, 2191 and 2192p]

24. TECHNOLOGY ZONES PROGRAM AND TAX CREDIT AND AGRICULTURAL DEVELOPMENT ZONE [LFB Paper 106]

Governor: Require Commerce to designate as technology zones up to seven areas in the state in fiscal year 2001-02, up to seven areas in 2002-03 and up to six areas in 2003-04. Designation of an area as a technology zone would be for 10 years. Commerce could change the boundaries of a technology zone at any time that its designation is in effect. A change in boundaries would not affect the designation of the area as a technology zone or the maximum amount of tax credits that could be claimed in the technology zone.

A business that was located in a technology zone and that was certified by Commerce would be eligible to claim a technology zones credit that would be created under the bill. The credit would equal the sum of the following:

a. The amount of real and personal property taxes that the business paid during the tax year.

b. The amount of state income and franchise taxes that the business paid during the tax year.

c. The amount of state, county and special district sales and use taxes that the business paid during the tax year.

The maximum amount of tax credits that could be claimed in a technology zone would be $5,000,000. Credits that were not entirely used to offset income or franchise taxes in the current year could be carried forward up to 15 years to offset future tax liabilities. The Department of Revenue would be authorized to deny any portion of a technology zone credit that was claimed if allowing the full amount of a credit to be claimed would cause the total amount of credits claimed to exceed to maximum credit limit for the zone. DOR would be required to notify Commerce of all technology zone tax credit claims, administer credit claims, and take any action, conduct any proceeding and proceed as authorized under income and franchise tax provisions relating to timely claims, assessments, refunds, appeals, collection, interest and penalties. Commerce would be required to verify information related to technology zones tax credit claims that was submitted to DOR by businesses.

The Department of Commerce could certify a business as eligible for technology zone tax credits if the business met the following requirements:

a. The business was located in a technology zone.

b. The business was a new or expanding business.

c. The business was a high-technology business.

In determining whether to certify a business for tax credits Commerce would be required to consider:

a. How many jobs the business was likely to create.

b. The extent and nature of the high technology used by the business.

c. The likelihood that the business would attract related enterprises.

d. The amount of capital investment that the business would be likely to make in Wisconsin.

e. The economic viability of the business.

When Commerce certified a business as eligible for tax credits, Commerce would establish a limit on the amount of tax credits the business could claim. Generally, unless certification was revoked and subject to the maximum limit on credits that could be claimed, a business could claim a tax credit for three years. However, if the business experienced growth, as determined by Commerce, it could claim a tax credit for up to five years.

Commerce would be required to enter into an agreement with a business that it certified. The agreement would specify the limit on the amount of tax credits that the business could claim, the extent and type of growth that that business would have to experience to extend

eligibility for tax credits, the baseline against which growth would be measured, other conditions that would have to be met to extend eligibility for tax credits, and reporting requirements.

Commerce would be required to notify DOR of the following:

a. Designation of a technology zone.

b. Certification of a business and the limit on the amount of tax credits the business could claim.

c. Extension or revocation of a business' certification.

The bill would require Commerce to promulgate administrative rules for administering the technology zones program including rules relating to the following:

a. Criteria for designating an area as a technology zone.

b. A business' eligibility for certification for tax credits as well as definitions of "new or expanding business" and "high-technology business."

c. Certifying a business, including use of criteria for consideration specified in the bill.

d. Standards for establishing a limit on the amount of tax credits that a business may claim.

e. Standards for extending a business' certification, including what measures, in addition to job creation, Commerce would use to determine the growth of a specific business and how Commerce would establish baselines for measuring growth.

f. Reporting requirements for certified businesses.

g. The exchange of information between Commerce and DOR.

h. Reasons for revoking a business' certification.

i. Standards for changing the boundaries of a technology zone.

The tax credit provisions would first apply to tax years beginning on January 1 of the year in which the bill generally takes effect, unless the bill's general effective date is after July 31. In that case, the provisions would first apply to tax years beginning on January 1 of the following year.

The administration has not provided an estimate of the amount of reduction in state individual and corporate income and franchise taxes that would result from tax credit claims.

Wisconsin has two programs that provide tax credits to businesses as incentives to expand and locate in designated economically distressed areas: development zones and

enterprise development zones. The programs are designed to promote economic growth through job creation and investment in the distressed areas. Designation criteria target areas with high unemployment, low incomes and decreasing property values. Businesses which locate or expand in the different zones are eligible to receive various tax credits. In addition, the state has designated an area in the City of Kenosha as a development opportunity zone. As of January, 2001, Commerce had designated 20 development zones and certified 56 enterprise development zones.

Eligible businesses that conduct economic activity in development or enterprise development zones may claim the development zone tax credit. The credit is based on amounts spent on environmental remediation and the number of full-time jobs created or retained. [More detail on the current development zone tax credit is provided in the earlier entry entitled "Milwaukee Development Opportunity Zone and Capital Investment Credit."]

The maximum amount of credits that can be claimed under the development zone program is $38,155,000. A total of $27.1 million has been allocated to these zones. The maximum amount of credits that can be claimed by an eligible business in an enterprise development zone is established by Commerce, but cannot exceed $3,000,000. Through December, 2000, over $93 million in tax credits had been allocated to certified enterprise development zones.

Joint Finance: Modify provisions as follows: (a) authorize the Department of Commerce to create up to nine technology zones (rather than 20) but provide that the Department could not designate more than three zones without approval of the Joint Committee on Finance; and (b) limit the total amount of technology zones tax credits that could be claimed in a zone to $3,000,000 (rather than $5,000,000). Also, a technical modification would provide that partnerships, limited liability companies and S corporations could pass the technology zones credit on to partners and members.

Senate: Delete provisions.

Assembly: Include provisions that would authorize the Department of Commerce to designate as technology zones up to 18 areas in the state. However, the Department could not create more than three zones without approval of the Joint Committee on Finance. Designation of an area as a technology zone would be for 10 years. A business that was located in a technology zone and that was certified by Commerce would be eligible to claim a technology zones credit that would be created under the bill. As under the Governor's recommendation and Joint Finance provision, the credit would equal the sum of the state and local property, income and sales taxes that the business paid during the tax year.

The maximum amount of tax credits that could be claimed in a technology zone would be $5,000,000. Credits that were not entirely used to offset income or franchise taxes in the current year could be carried forward up to 15 years to offset future tax liabilities.

Commerce would be required to designate a technology zone in the City of Marshfield.

In addition, an agricultural development zone program would be created. Under the program, Commerce would be required to designate two agricultural development zones located in rural municipalities and that could exist for 10 years. A rural municipality would be: (a) a city, town or village that is located in a county with a population density of less than 150 persons per square mile; or (b) a city, town or village with a population of 6,000 or less. New or expanding agricultural businesses in a zone could claim the following tax credits under the state individual and corporate income and franchise taxes: (a) the development zones capital investment credit equal to 3.0% of the purchase price of depreciable real and tangible personal property primarily used in the zone and 3% of the amount expended to acquire, construct, rehabilitate, remodel or repair real property in the zone (this credit is provided for the Milwaukee and Beloit development opportunity zones); and (b) the development zones jobs and environmental remediation credit. Unused tax credits could be carried forward up to 15 years to offset future tax liabilities. The maximum amount of credits that could be claimed by agricultural businesses in a zone would be $5,000,000 and the tax credits would first apply to tax years beginning on or after January 1, 2003. The Department of Commerce would administer the program. Since the tax credits would first apply to tax years beginning on or after January 1, 2003, there would be no fiscal effect in the current biennium. However, it is estimated that the $10,000,000 in authorized tax credits would be claimed beginning in the 2003-05 biennium.

Conference Committee/Legislature: Adopt Assembly provisions with the following modifications:

a. Limit the total number of technology zones that could be created to eight;

b. Require that Commerce could not create a technology or agricultural development zone without the approval of the Joint Committee on Finance;

c. Require that one agricultural development zone be authorized as specified under the Assembly provisions;

d. Include a technical amendment to clarify that noncorporate businesses could claim the technology zones and agricultural development zones tax credits;

e. Delete the provision that would require Commerce to designate a technology zone in the City of Marshfield.

Veto by Governor [B-12]: Delete the requirement that the Joint Committee on Finance must approve Commerce's designation of a technology or agricultural development zone.

[Act 16 Sections: 2143, 2146, 2146m, 2147k, 2147r thru 2148, 2153, 2157, 2175, 2177, 2177m, 2178k, 2178r thru 2179, 2181, 2182, 2191, 2191m, 2192k, 2192r thru 2193, 2195, 2204, 3700, 3700d, 3708m, 3713 and 9344(10),(11z),(22)&(30nk)]

[Act 16 Vetoed Sections: 3708m and 3713]

25. DEVELOPMENT ZONES TAX CREDIT -- DEFINITION OF TARGET GROUP MEMBER

Governor: Modify the definition of "member of a targeted group" used for the full-time jobs component of the development zones tax credit to eliminate: (a) persons who would be members of a targeted group under the definition used for the prior development zones jobs tax credit; (b) persons unemployed because of a business closing or mass layoff; and (c) dislocated workers as defined under federal law. Instead, the bill would specify that "member of a targeted group" would include a person who was a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income (SSI) recipient, a general assistance recipient, an economically disadvantaged ex-convict, a qualified summer youth employee as defined under federal law, or a food stamp recipient.

This modification would first apply to tax years beginning on January 1 of the year in which the bill generally takes effect, unless the bill's general effective date is after July 31. In that case, the new definition would first apply to tax years beginning on January 1 of the following year. The administration estimates the fiscal effect of this provision to be minimal.

Currently, a consolidated development zone credit can be claimed by businesses in development and enterprise development zones. The credit is based on amounts spent on environmental remediation and the number of full-time jobs created or retained. The credit can only be used to offset income from the claimant's business activities in the development or enterprise development zone.

The full-time jobs component allows a credit of up to $8,000 against corporate income taxes for: (a) each full-time job created in a development or enterprise development zone or development opportunity zone and filled by a member of a targeted group; and (b) retaining a full-time job in an enterprise development zone if the Department of Commerce determines that a significant capital investment was made to retain the full-time job. In addition, a credit of up to $6,000 can be claimed for each full-time job created or retained in a development or enterprise development zone that is filled by an individual who is not a member of a targeted group. At least one-third of job credits claimed must be based on jobs created and filled by targeted group members.

Under current law, "member of a targeted group" includes: (a) a person who is a member of a targeted group under the definition used for the prior development zones jobs tax credit; (b) a person who resides in an empowerment zone or an enterprise community that the federal government has designated; or (c) a Wisconsin Works (W-2) participant, if the person or participant is certified in the appropriate manner and by the appropriate designated local agency.

Under the prior development zone jobs tax credit [(a) above], the definition of eligible target groups was referenced to federal law for the targeted jobs tax credit as amended to December 31, 1995. Under those federal law provisions, eligible target groups include:

1. Disabled individuals receiving vocation rehabilitation services;

2. Economically disadvantaged youths;

3. Economically disadvantaged Vietnam veterans;

4. SSI recipients;

5. General assistance recipients;

6. Youths who were members of an economically disadvantaged family and participants in a qualified cooperative education program;

7. Economically disadvantaged ex-convicts;

8. Eligible work incentive program employees or participants in work incentive demonstration programs; and

9. Qualified summer youth employees.

The prior development zones job credit expanded the definition of target groups to include dislocated workers. As a result, eligible target groups also include: (a) persons who have been terminated or laid off or who have received notice of termination or layoff, are eligible for or have exhausted their unemployment compensation benefits, and are unlikely to return to their previous industry or occupation; (b) persons who have been terminated or who have received notice of termination or layoff as a result of a permanent plant closure; (c) persons who are long-term unemployed and have limited opportunities for new employment in a similar occupation in the area, including elderly who face barriers to employment because of their age; and (d) persons who were self-employed, including farmers, and are unemployed as a result of general economic conditions in their area or because of natural disasters. The definition of target groups also includes persons who are unemployed as a result of plant closings or mass layoffs that are subject to the state plant closing law.

Joint Finance/Legislature: Include provisions and make a technical modification to restore dislocated workers in the definition of target group members used for the development zone tax credit.

[Act 16 Sections: 2147, 2178, 2192 and 9344(11)]

26. DEVELOPMENT ZONES SALES TAX CREDIT

GPR	- $200,000

Governor/Legislature: Decrease the sum sufficient appropriation for the development zones sales tax credit by $100,000 annually. Total funding would be $50,000 each year. This reflects elimination of the refundable credit for tax years beginning on January 1, 1997.

27. DEVELOPMENT ZONES JOBS TAX CREDIT

GPR	- $200,000

Governor/Legislature: Decrease the sum sufficient appropriation for the development zones jobs tax credit by $100,000 annually. Total funding would be $50,000 each year. This reflects elimination of the refundable credit for tax years beginning on January 1, 1997.

28. DEVELOPMENT ZONES LOCATION TAX CREDIT

GPR	- $1,000

Governor/Legislature: Decrease funding by $500 annually for the development zones location credit for Native American Businesses or tribal enterprises. Total funding would be $2,000 annually.

29. DEVELOPMENT ZONES INVESTMENT TAX CREDIT

GPR	- $1,000

Governor/Legislature: Decrease funding by $500 annually for the development zones investment credit for Native American Businesses or tribal enterprises. Total funding would be $2,000 annually.

30. POLLUTION ABATEMENT EQUIPMENT DEDUCTION APPROVAL

Governor/Legislature: Specify that, for businesses that are taxed under the individual income tax, DOR must approve the deduction for the cost of waste treatment and pollution abatement equipment only if the taxpayer is subject to the state utility or insurance premiums tax. Currently, all businesses claiming the deduction must have the property approved by DOR, not just utilities and insurers.

[Act 16 Sections: 2144 and 9344(6)]

31. RECYCLING SURCHARGE -- NONCORPORATE FARMS

Governor/Legislature: Require noncorporate farms to pay the same recycling surcharge as other noncorporate businesses (sole proprietorships, partnerships, limited liability companies taxable as partnerships and S corporations). Under this provision, noncorporate farms with less than $4,000,000 in gross receipts would be excluded from paying the surcharge. Noncorporate farms with gross receipts of more than $4,000,000 would pay 0.2% of net business income, subject to a minimum payment of $25 and a maximum payment of $9,800. Under current law, noncorporate farms with gross receipts in excess of $1,000,000 pay the $25 minimum payment. This provision would first apply to tax years beginning on January 1, 2001, and is estimated to have a minimal fiscal effect.

[Act 16 Sections: 2249, 2250 and 9344(17)]

32. CORPORATE INCOME AND FRANCHISE TAX -- COMBINED REPORTING

Senate: Require, beginning with tax years starting on or after January 1, 2002, corporations that are subject to the state corporate income and franchise tax and that are members of an affiliated group engaged in a unitary business to compute state corporate income and franchise tax liability using the combined reporting method of determining income. This provision would increase corporate income and franchise tax revenues by an estimated $28,000,000 in 2001-02 and $70,000,000 in 2002-03.

Conference Committee/Legislature: Delete provision.

33. CORPORATE INCOME TAX -- DEDUCTION FOR SALARIES PAID TO CORPORATE OFFICERS AND EMPLOYEES

Senate: Limit the deduction for wages, salaries, commissions and bonuses paid to an employee or officer of a corporation to an amount equal to twenty-five times the wages, salaries, commissions and bonuses paid to the corporation's lowest paid full-time employee. The provision would first apply to tax years beginning on January 1 of the year in which the bill generally took effect, unless the effective date is after July 31. In that case, the provision would first apply to tax years beginning on January 1 of the following year. It is estimated that this provision would increase corporate income and franchise taxes by $5,500,000 in 2001-02 and $11,100,000 in 2002-03. Under current law, a publicly-held corporation cannot deduct compensation (remuneration) in excess of $1 million per tax year that is paid or accrued to certain executives.

Conference Committee/Legislature: Delete provision.

34. EDUCATION TAX CREDIT

Assembly: Provide, for tax years beginning on or after July 1, 2003, a tax credit under the individual and corporate income and franchise taxes equal to the following: (a) 50% of the tuition that the claimant paid or incurred during the year for an individual to participate in an education program of a qualified postsecondary institution, if the individual was enrolled in a degree-granting program; and (b) 75% of the tuition that the claimant paid or incurred during the year for an individual to participate in an education program of a qualified postsecondary institution, if the individual was enrolled in a degree-granting program and if the individual's taxable income in the year prior to beginning the education program was not more than 185% of the federal poverty line. The credit could be carried forward up to fifteen years to offset future tax liabilities.

Sole proprietorships, corporations and insurance companies could claim the education tax credit to offset income and franchise tax liabilities. Partnerships, limited liability companies and S (tax-option) corporations could not claim the tax credit, but eligibility for and the amount of

tax credit that could be claimed would be based on the amounts paid for tuition by the entity. A partnership, LLC or S corporation would be required to compute the amount of tax credit that each of its partners, members or shareholders, respectively, could claim and to provide that information to them. Partners, LLC members or shareholders of S corporations would claim the tax credit in proportion to their ownership interest.

The claimant could not claim tax credits based on tuition amounts also used to claim the state or federal higher education deduction or tax credits. In addition, a claimant could not claim a tax credit for any tuition amounts paid or incurred for a family member of the claimant or a family member of a managing employee unless all of the following applied: (a) the family member was employed an average of at least 20 hours a week as an employee of the claimant, or the claimant's business, during the one-year period prior to beginning participation in the education program for which the claimant claims a credit; (b) the family member is enrolled in a degree-granting program that is substantially related to the claimant's business; and (c) the family member is making satisfactory progress towards completing the degree-granting program.

"Degree-granting program" would be defined as an educational program for which an associate, a bachelor's or graduate degree is awarded upon successful completion. "Qualified postsecondary institution" would mean a University of Wisconsin System institution, a technical college system institution, a regionally accredited 4-year nonprofit college or university having its regional headquarters and principal place of business in Wisconsin, and a school approved by the Educational Approval Board if the school has a physical presence and delivery of education occurs in Wisconsin. "Managing employee" would be an individual who wholly or partially exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the claimant's business.

Because the tax credit would first apply to tax years beginning on or after July 1, 2003, there would be no fiscal effect in the 2001-03 biennium. However, when implemented the education tax credit would reduce state individual and corporate income and franchise tax revenues by an estimated $11,900,000 annually.

Conference Committee/Legislature: Delete provision.

35. CONSERVATION LAND, CONSERVATION EASEMENT TAX CREDIT

Assembly: Provide, for tax years beginning on or after July 1, 2003, a tax credit under the individual and corporate income and franchise taxes, in an amount equal to 50% of the assessed value of property or a conservation easement, to the extent that the property or easement is a qualified conservation contribution that is donated to the state, a local governmental unit or a nonprofit conservation organization. The maximum credit would be $100,000 and unused credit amounts could be carried forward up to 10 years to offset future tax liabilities.

Sole proprietorships, corporations and insurance companies could claim the tax credit to offset income and franchise tax liabilities. Partnerships, LLCs and S corporations could not claim the tax credit, but eligibility for and the amount of tax credit that could be claimed would be based on the value of land donated by the entity. A partnership, LLC or S corporation would be required to compute the amount of tax credit that each of its partners, members or shareholders, respectively, could claim and to provide that information to them. Partners, LLC members or shareholders of S corporations would claim the tax credit in proportion to their ownership interest.

The Department of Revenue would be authorized to administer the credit and could take any action, conduct any proceeding and proceed as it is authorized under current income and franchise tax law provisions. State income and franchise tax provisions related to assessments, refunds, appeals, collection, interest, and penalties would apply to the credit.

A "local governmental unit" would be defined as a political subdivision of the state, a special purpose district, an instrumentality or corporation of a political subdivision or special purpose district, a combination or subunit of a political subdivision or special purpose district, or an instrumentality of the state. "Nonprofit conservation organization" would be defined as a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include acquisition of property for conservation purposes as described in the federal Internal Revenue Code and is exempt from the federal income tax under the IRC. The definition of "conservation easement" would be referenced to current state law and would be a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, or preserving the historical, architectural, archaeological or cultural aspects of real property.

A "qualified conservation contribution" would be defined by referencing federal law and would be a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. Under federal law, a "qualified real property interest" is any of: (a) the entire interest of the donor other than a qualified mineral interest; (b) a remainder interest; or (c) a restriction (granted in perpetuity) on the use of the real property. "Conservation purpose" would mean: (a) the preservation of land areas for outdoor recreation by, or the education of, the general public; (b) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (c) the preservation of open space, including farmland or forest land, that will yield a public benefit, where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated federal, state or local governmental conservation policy; or (d) the preservation of an historically important land area or a certified historic structure.

Within five years after the effective date of the land and easement conservation tax credit, the Department of Natural Resources and DOR, along with the Gathering Waters Conservancy,

would be required to prepare a report on the effectiveness of the tax credit, including recommended changes to the credit to encourage conservation donations, and submit the report to the Speaker of the Assembly and President of the Senate.

Because the tax credit would first apply to tax years beginning on or after July 1, 2003, there would be no fiscal effect in the 2001-03 biennium. However, when fully implemented, on an annualized basis, it is estimated that the credit would reduce state individual and corporate income and franchise tax revenues by $1,700,000.

Local registers of deeds would be required to maintain a separate index for recording conservation easements.

Conference Committee/Legislature: Delete provision.

36. BELOIT DEVELOPMENT OPPORTUNITY ZONE

Senate/Assembly/Legislature: Require the Department of Commerce to designate an area in the City of Beloit as a development opportunity zone that would exist for seven years. Any corporation that located and conducted economic activity in the zone would be eligible to claim the development zone tax credit and a development zone capital investment credit and the maximum amount of tax credits that could be claimed by businesses in the zone would be $4,700,000.

In order to claim tax credits, a corporation that conducts or intends to conduct economic activity in the Beloit development opportunity zone would have to submit a project plan to the Department of Commerce, in conjunction with the Common Council. Commerce would be authorized to revoke the entitlement for tax credits of a corporation that: (a) supplied false or misleading information to obtain the tax benefits; (b) left the zone to conduct substantially the same business outside the development opportunity zone; or (c) ceased operations in the zone and did not renew the same or similar operations within 12 months. DOR would have to be notified within 30 days of a revocation.

Commerce would be required to estimate the amount of revenue that would be forgone due to tax credits claimed by businesses in the development opportunity zone. The zone would expire 90 days after the day on which the Department of Commerce determined that the amount of forgone revenue equaled or exceeded the tax credit limit. Commerce would notify the Common Council of any change in the expiration date and notify the Department of Revenue of corporations entitled to claim the tax credits and to verify information submitted by claimants.

Based on information provided by the City of Beloit concerning the timing of investments in the proposed development opportunity zone, it is estimated that there would be a minimal

fiscal effect during the 2001-03 biennium. However, it is anticipated that the $4,700,000 in tax credits would likely be claimed in the 2003-05 biennium.

[Act 16 Sections: 2143, 2146, 2147k, 2147m, 2147r, 2147t, 2152, 2157, 2175, 2176, 2176m, 2177, 2178k, 2178m, 2180, 2190p, 2191, 2192k, 2192m, 2194, 2203, 2248, 3700, 3701m, 3702, 3703, 3703m, 3703p, 3704, 3704c, 3704e thru 3708 and 9344(9)&(10)]

Estate Tax

1. ESTATE TAX [LFB Paper 122]

	Jt. Finance (Chg. to Base)	Legislature (Chg. to JFC)	Net Change
GPR-REV	$0	- $29,000,000	- $29,000,000

Joint Finance: For deaths occurring prior to October 1, 2002, modify the state estate tax statutes to reference the federal law in effect on December 31, 2000. For deaths occurring on or after October 1, 2002, reference the federal law in effect at that time. Specify that for deaths occurring after December 31, 2001, and before October 1, 2002 (the period for which the Wisconsin estate tax would reference federal estate tax law in effect on December 31, 2000), a person who prepares an estate tax return would be required to do so in a manner prescribed by the Department of Revenue.

Currently, Wisconsin imposes an estate tax that is equal to the federal credit for death taxes paid to a state government. Under such a tax, commonly known as a "gap" or "pick-up" tax, the state death tax results in a dollar-for-dollar reduction of federal estate tax liability and does not lead to an increase in total taxes due on an estate.

Under the federal Economic Growth and Tax Relief Reconciliation Act of 2001 (which was signed into law on June 7, 2001), the federal estate tax will be phased out, beginning with taxes on decedents dying after December 31, 2001, and ending with complete repeal for decedents dying after December 31, 2009. The federal legislation also reduces the state death tax credit from the amounts under current law as follows: (a) by 25% for decedents dying during calendar year 2002; (b) by 50% for decedents dying during calendar year 2003; (c) by 75% for decedents dying during calendar year 2004; and (d) complete repeal of the state death tax credit for decedents dying after December 31, 2004.

The state estate tax is due and payable nine months after the date of the decedent's death, with extensions of the due date granted in some cases. Therefore, for decedents dying during

calendar year 2002, losses in state revenue under current state law would begin to occur in October, 2002.

Based on estimated state estate tax revenues in 2002-03 and the provisions under the new federal law, it is anticipated that, in the absence of a change in state law, state general fund tax revenues would decrease by $29,000,000 during 2002-03. Under current law, the estimated loss in state tax revenues after the 2001-03 biennium (in 2002-03 dollars) would be as follows: (a) $58,000,000 in 2003-04; (b) $86,000,000 in 2004-05; (c) $113,000,000 in 2005-06; and (d) $120,000,000 in 2006-07 and beyond. [The estimates provided for these years assume that settlements are dispersed evenly throughout each year and that the total for each fiscal year would be equal to that estimated for 2002-03 under current law. However, estate tax collections are significantly affected by the settlement, or lack thereof, of a small number of large estates. Collections may vary considerably from year to year. Therefore, the actual annual losses that would be experienced under the new federal law could also vary considerably from the estimates shown above.]

Under the provisions adopted by the Joint Committee on Finance, there would be no loss in state estate tax revenues in 2002-03. However, the state estate tax statutes would conform to the Economic Growth and Tax Relief Reconciliation Act beginning with decedents dying on or after October 1, 2002, which would result in state revenue losses for 2003-04 and thereafter.

Senate: Provide, for all deaths occurring on or after the effective date of the bill, that the state estate tax would be based on federal law in effect on December 31, 2000. Under the Senate provision, state estate tax revenues would not be reduced as a result of the federal law change.

Assembly: Delete the modifications to the state estate tax made by the Joint Committee on Finance. This provision would maintain current law, which would reduce estate tax revenues by an estimated $29,000,000 in 2002-03.

Conference Committee/Legislature: Provide that: (a) for deaths occurring after September 30, 2002, and before January 1, 2008, the state estate tax would reference federal estate tax law in effect on December 31, 2000; and (b) for deaths occurring on or after January 1, 2008, the state estate tax law would reference federal law in effect at that time. Estimate reduced general fund tax collections from the estate tax of $29,000,000 in 2002-03.

Modify the time period for which a person who prepares an estate tax return would be required to do so in a manner prescribed by the Department of Revenue to reference deaths occurring after December 31, 2002 (rather than to deaths occurring after December 31, 2001, and before October 1, 2002).

In addition, include nonstatutory language requiring the Secretary of DOR to submit draft legislation regarding additional modifications to the estate tax to the Joint Committee on Finance if the federal government enacts legislation that provides revenue to the state that is intended to offset the state estate tax revenue loss due to the 2001 federal tax bill. Require that

the legislation submitted by DOR result in no net increase or decrease in total state revenues when the fiscal effect of the potential federal enactment is taken into account.

Under these provisions, the state estate tax law would continue to generally reference current federal law until October 1, 2002 (resulting in the decreased revenue of $29,000,000 in 2002-03 from the recent federal law change). For deaths occurring from October 1, 2002, through December 31, 2007, the state estate tax would reference federal law in effect on December 31, 2000. For this period, the state would avoid the decreases in state revenue that would otherwise occur as a result of the federal law change. For deaths occurring on or after January 1, 2008, state estate taxes would be based on federal law in effect at the time.

[Under the new federal law, the state death tax credit is being phased out and will be eliminated for deaths occurring after December 31, 2004. However, under a sunset provision, the new federal law will revert to prior federal law for deaths occurring after December 31, 2010. Under the budget provisions and the new federal law (including the federal sunset provision), state estate tax collections would be eliminated for deaths occurring on or after January 1, 2008 and before January 1, 2011, after which state estate taxes would be based on the state death tax credit allowed under prior federal law.]

Veto by Governor [F-9]: Delete the reference to "December 31, 2002" from the provision requiring a person who prepares an estate tax return for deaths occurring after December 31, 2002, to do so in a manner prescribed by the Department of Revenue.

It was the Legislature's intent that this provision would apply starting October 1, 2002, to accommodate the different reporting mechanism needed to administer the state tax after it was decoupled from the federal tax in effect at the time. However, the enrolled bill incorrectly specified the date after which this provision should apply as December 31, 2002. The Governor's partial veto corrects this error by eliminating the erroneous December 31, 2002, date and, instead, applying the October 1, 2002, effective date that generally applies to the estate tax provisions.

[Act 16 Sections: 2200d thru 2200L, 9144(1q) and 9444(5ak)]

[Act 16 Vetoed Section: 2200L]

General Sales and Use Tax

1. SALES TAX ON CUSTOM COMPUTER PROGRAMS [LFB Paper 110]

	Governor (Chg. to Base)	Jt. Finance (Chg. to Gov)	Legislature (Chg. to JFC)	Net Change
GPR-REV	$52,000,000	- $500,000	- $51,500,000	$0

Governor: Change the definition of tangible personal property so that custom computer programs would be subject to the state's sales and use tax. Current law defines tangible personal property to include standard computer programs but specifically excludes custom programs. This change would take effect on the first day of the second month beginning after publication and is estimated to raise additional tax revenues of $16,000,000 in 2001-02 and $36,000,000 in 2002-03.

Joint Finance: Adopt the Governor's recommendation. Reestimate the fiscal effect of the change to be an increase in revenues of $20,500,000 in 2001-02 and $31,000,000 in 2002-03. These estimates are $4,500,000 higher in 2001-02 and $5,000,000 lower in 2002-03 than the Governor's estimates. In 2001-02, the difference is due primarily to an assumed effective date of October 1, 2001, for the provision, as opposed to a January 1, 2002, effective date assumed by the Governor. The reduced estimate for 2002-03 is largely due to slower anticipated growth in custom programming services relative to that forecast at the time the administration prepared its estimates.

Assembly/Legislature: Delete provision.

2. SALES TAX TREATMENT OF SERVICES TO TANGIBLE PERSONAL PROPERTY [LFB Paper 111]

Governor: Modify current provisions imposing the sales tax on services to tangible personal property.

Additions or Capital Improvements to Real Property. Under current law, the sales tax is generally imposed on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all items of tangible personal property. However, the tax is not imposed on the installing or applying of tangible personal property which, when installed or applied, will constitute an addition or capital improvement of real property. The bill would eliminate the exemption for installing or applying tangible personal property that becomes an addition or capital improvement to real property.

Business Equipment. The current statutes regarding the taxation of services to tangible personal property also specify a number of types of property that are deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property. Among these are "office, restaurant and tavern type equipment." The bill would modify this provision by replacing the phrase "office, restaurant and tavern type equipment" with "equipment in offices, business facilities, schools, and hospitals but not in residential facilities (including personal residences, apartments, long-term care facilities, prisons, secured correctional facilities, mental health institutes, centers for the developmentally disabled or similar facilities)." This is intended to clarify that any equipment used in these nonresidential settings would retain its character as tangible personal property, regardless of the type of equipment.

These provisions would take effect on the first day of the second month beginning after publication of the bill, and are estimated to have a minimal fiscal effect.

Joint Finance/Legislature: Approve the Governor's recommendation with technical modifications recommended by DOR. These modifications to the bill's provisions specify that the sales tax would apply to services to the items deemed to retain their character as tangible personal property, regardless of whether the installation or application of tangible personal property to the items is an addition or capital improvement of real property; but not to the original installation or complete replacement of an item listed if the installation or replacement constitutes a real property construction activity as defined in s. 77.51(2).

[Act 16 Sections: 2245 and 9444(1)]

3. SALES TAX ON NONCOMMERCIAL AIRCRAFT [LFB Paper 900]

Governor: Specify that by July 1, 2004, and every July 1 thereafter, DOR must determine, and deposit into the transportation fund, the total amount of sales and use tax paid in the immediately preceding calendar year on the sale and use of noncommercial aircraft. Current law requires all sales tax revenues to be deposited into the general fund. Beginning in 2003-04, this provision would increase transportation fund revenues by an estimated $3,300,000 per year and reduce general fund revenues by the same amount.

Joint Finance/Legislature: Delete provision.

4. SALES TAX EXEMPTION FOR GREEN BAY PACKERS SEAT LICENSES

Joint Finance/Legislature: Eliminate the December 31, 2003, scheduled termination of the sales tax exemption on gross receipts from the sale or use of a one-time seat license for Green Bay Packers football games. The fiscal effect of this provision is estimated to be minimal.

[Act 16 Section: 2246m]

5. SALES TAX EXEMPTION FOR FARM INPUTS

Assembly: Expand the sales and use tax exemption for inputs used in the business of farming to include lubricants, nonpowered equipment and other tangible personal property used exclusively and directly in farming operations. Specify that "farming" includes husbandry activities and aquaculture.

Current law provides that the following items used in agricultural production are exempt from sales tax:

a. Farm tractors and machines, including parts, used exclusively and directly in the business of farming;

b. Seeds, plants, feed, fertilizer, pesticides and related chemicals, livestock, wire and twine, animal bedding, plastic sheeting and certain containers used in farming;

c. Livestock semen used for artificial insemination;

d. Fuel and electricity sold for use in farming;

e. Medicine used on farm livestock, not including workstock;

f. Milkhouse supplies used exclusively in producing and handling milk on dairy farms;

g. Animal tags and standard milk samples sold by the Department of Agriculture, Trade and Consumer Protection.

In addition, veterinary medical and hospitalization services are not taxable services in Wisconsin.

The budget provision would repeal the specific exemptions for fuel and electricity sold for use in farming and the exemption for milkhouse supplies used in producing milk on dairy farms and create a broad-based exemption for all tangible personal property (including fuel and electricity and milkhouse supplies) used exclusively and directly in the business of farming.

Examples of currently taxable items that would be exempt under the proposal include the following: (a) tools used in constructing farm buildings and fences and in making repairs to real estate, tractors or other farm machines; (b) non-powered equipment such as applicators for fertilizers and insecticides, cutters, dairy scales, barn brooms and machine parts; (c) vitamins; (d) supplements (including bovine growth hormone) and related supplies for livestock not currently exempt; and (e) lubricants, detergents and miscellaneous additional supplies.

These changes would take effect on July 1, 2002, and would reduce general fund revenues by an estimated $4,700,000 in 2002-03.

Conference Committee/Legislature: Delete provision.

6. SALES TAX EXEMPTION FOR SCHOOL CONSTRUCTION MATERIALS

Assembly: Create a sales tax exemption for building materials purchased by private entities that are used in school construction, renovation or development projects in Wisconsin pursuant to a contract with a school district. Specify that the exemption would take effect on January 1, 2003.

Under current law, contractors are subject to sales and use tax on purchases of materials used in real property construction, renovation or development whether or not the construction is for an entity that is exempt from sales and use tax. The purchase of construction materials made by an exempt entity, such as a school district, is exempt from the sales and use tax.

It is estimated the exemption would result in reduced general fund revenues of $2,700,000 in 2002-03 and $5,400,000 on an annualized basis.

Conference Committee/Legislature: Delete provision.

7. SALES TAX ON MOBILE TELECOMMUNICATIONS SERVICES

Senate: Modify the treatment of mobile telecommunications services to bring Wisconsin sales tax statutes into conformance with the federal Mobile Telecommunications Sourcing Act.

Under current law, the sale of a mobile telecommunications service, such as the use of a cellular telephone, is subject to the sales tax if the service either originates or terminates in Wisconsin. For example, a call placed via cell phone by a Wisconsin resident from a neighboring state to a non-Wisconsin destination would not be taxable because the call did not originate or terminate in Wisconsin.

This provision would define "mobile telecommunications service" as a commercial mobile radio service as defined in federal regulations [47 CFR 20.3]. It provides that, for customer bills issued after August 1, 2002, mobile telecommunications services would be subject to the sales and use tax if the customer's place of primary use of the service is in Wisconsin, regardless of where the service originates or terminates. This change would bring Wisconsin's sales and use tax statutes into conformance with P.L. 106-252, the federal Mobile Telecommunications Sourcing Act, by incorporating the sourcing provisions of P.L. 106-252 into state law. Should P.L. 106-252 or its application be found unconstitutional, the sale of mobile telecommunications services would be subject to the sales and use tax under the current state provisions.

It is estimated that adoption of these provisions would result in increased general fund revenues of $500,000 in fiscal year 2002-03.

Conference Committee/Legislature: Delete provision.

8. SALES TAX EXEMPTION FOR CERTAIN COMMON OR CONTRACT MOTOR CARRIERS

Assembly: Extend the sales tax exemption for purchases of vehicles and vehicle parts by common and contract carriers who provide transportation for hire to include purchases by for-hire haulers of cargo that is deemed to have no economic value, such as waste or snow. Specify

that this tax treatment would take effect on the first day of the second month beginning after publication of the bill.

Under current policy, the Department of Revenue interprets the definition of "property," for purposes of determining eligibility for the sales tax exemption on vehicle and vehicle parts purchases by common and contract carriers, as constituting only cargo that has economic value. This interpretation has the effect of denying for-hire haulers of garbage, sand, snow and other materials commonly considered to lack economic value an exemption from the sales tax on their purchases of vehicles and vehicle parts.

It is estimated that adoption of these provisions would result in reduced general fund revenues of $180,000 in 2001-02 and $260,000 in 2002-03.

Conference Committee/Legislature: Delete provision.

9. SALES TAX EXEMPTION FOR FLAGS

GPR-REV	- $240,000

Assembly/Legislature: Create a sales tax exemption for the United States flag and the flag of the State of Wisconsin, effective on the first day of the second month beginning after publication of the budget act. The exemption would not apply to representations of these flags. This provision would reduce general fund tax revenues by an estimated $100,000 in 2001-02 and $140,000 in 2002-03.

[Act 16 Sections: 2246n and 9444(1m)]

10. SALES TAX EXEMPTION FOR WATER-PARK WATER SLIDES

	Legislature (Chg. to Base)	Veto (Chg. to Leg)	Net Change
GPR-REV	- $210,000	$210,000	$0

Senate: Create a sales and use tax exemption for water slides, including their support structures, attachments and parts. This exemption would take effect on the first day of the second month beginning after publication of the bill. It is estimated that the exemption would result in reduced general fund revenues of $90,000 in 2001-02 and $120,000 in 2002-03.

Conference Committee/Legislature: Adopt the Senate provision with a modification to clarify that the exemption would apply only to waterpark water slides, not to water slides located at residential properties.

Veto by Governor [F-7]: Delete provision.

[Act 16 Vetoed Sections: 2246nm and 9444(3w)]

11. USE TAX EXEMPTION FOR CERTAIN ADVERTISING MATERIALS PRINTED OUT OF STATE

Assembly: Exempt from the use tax materials printed outside Wisconsin that are shipped by the printer directly to the persons designated by the purchaser, so long as the purchaser does not take possession of the materials. Specify that the exemption would be retroactive to transactions first occurring on or after January 1, 1990.

Under current law, advertising materials such as catalogs that are printed outside this state and shipped directly to the purchaser's customers--without the purchaser having taken possession of the printed materials--are subject to Wisconsin's use tax if the out-of-state printer has nexus (business connection) in Wisconsin. The use tax does not apply if the out-of-state printer does not have nexus with this state. The provision would extend the current exemption to out-of-state printers that have nexus with Wisconsin.

Adequate data do not exist to accurately estimate the revenue loss that would result from adoption of these provisions.

Conference Committee/Legislature: Delete provision.

12. MODIFY USE TAX PROVISIONS REGARDING BOATS BERTHED IN WISCONSIN BOUNDARY WATERS

Senate: Modify the use tax exemption for boats purchased as exempt occasional sales in other states and berthed in the boundary waters of this state to allow the exemption for boats purchased anywhere outside Wisconsin rather than just for boats purchased in states that are contiguous to Wisconsin.

Under current law, the use tax is imposed on items purchased in other states and used in Wisconsin if the item would be taxable if purchased in this state. However, an exemption is provided for boats that are berthed in Wisconsin boundary waters if: (a) the boat was purchased by an individual domiciled in a contiguous state; (b) the purchase was made in the contiguous state in which the individual is domiciled; and (c) the purchase was an exempt occasional sale under the laws of the other state. This proposal would modify item (b) to allow the exemption for a boat purchased anywhere outside Wisconsin, rather than only for boats purchased in contiguous states. Adoption of this proposal would result in a minimal revenue loss.

Conference Committee/Legislature: Delete provision.

13. SALES TAX REBATE AND EXEMPTION FOR PURCHASES OF DIGITAL BROADCASTING EQUIPMENT

Senate: Provide a rebate of the sales tax paid on purchases of digital broadcasting equipment by radio and television stations during the period July 1, 2001, through June 30, 2003, with rebates to be paid by November 30, 2003. Create a sales tax exemption for television and radio stations' purchases of digital broadcasting equipment, effective July 1, 2003.

Rebates under this provision would not be processed and paid until the 2003-04 state fiscal year. Therefore, no revenue loss is associated with the rebate during the 2001-03 biennium. When rebates are issued for the period July 1, 2001, through June 30, 2003, it is estimated that they would total $3,500,000. Rebates for television-related equipment are anticipated to account for this entire amount, as standards for digital radio transmission have not been adopted by the Federal Communications Commission and are not expected to be finalized until late summer 2002, at the earliest.

Revenue losses to the general fund associated with the sales tax exemption are estimated as follows: (a) for television stations, $735,000 per year during fiscal years 2003-04 through 2005-06; and (b) for radio stations, $1,800,000 total during fiscal years 2003-04 through 2008-09. For radio, the timing of revenue losses in individual fiscal years is unknown at present.

Conference Committee/Legislature: Delete provision.

14. STREAMLINED SALES TAX AGREEMENT

Senate/Legislature: Incorporate the provisions of Senate Bill 152, which would create the uniform sales and use tax administration act and authorize the Department of Revenue to enter into an agreement with other states to simplify and modernize sales and use tax administration.

General Provisions. DOR would be authorized to enter into the streamlined sales tax agreement with other states to "simplify and modernize sales tax and use tax administration in order to substantially reduce the tax compliance burden for all sellers and for all types of commerce." DOR could act jointly with other states that are signatories to the agreement to establish standards for the certification of a certified service provider and certified automated system and to establish performance standards for multistate sellers. The Secretary of Revenue or the Secretary's designee would be authorized to represent Wisconsin before the states that are signatories to the agreement.

"Certified service provider" would mean an agent that is certified jointly by the signatory states and that performs all of a seller's sales tax and use tax functions related to the seller's retail sales. "Certified automated system" would be defined as software that is certified jointly by the states that are signatories to the agreement and that is used to calculate the sales tax and use tax on a transaction by each jurisdiction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

DOR would also be granted authority to promulgate rules to administer the uniform sales and use tax provisions, procure jointly with other signatory states goods and services in furtherance of the agreement and take other actions reasonably required to implement the agreement.

Restrictions. DOR could not enter into the agreement unless the agreement requires that signatory states do all of the following:

a. Limit the number of state sales and use tax rates.

b. Limit the use of any caps on the amount of state sales and use tax due on a transaction.

c. Limit thresholds on the application of sales and use tax.

d. Establish uniform standards for the sourcing of transactions to the appropriate taxing jurisdictions, for administering exempt sales, and for sales and use tax returns and remittances.

e. Develop and adopt uniform definitions related to sales and use tax.

f. Provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

g. Provide that the state cannot use a seller's registration with the central electronic registration system and the subsequent collection and remittance of sales and use taxes in signatory states to determine whether the seller has sufficient connection with the state for the purpose of imposing any tax.

h. Restrict variances between the state tax bases and local tax bases.

i. Administer all local sales and use taxes within the state so that sellers who collect and remit taxes are not required to register with, or submit returns or taxes to, local jurisdictions and are not subject to audits by local jurisdictions.

j. Restrict the frequency of changes in any local sales and use tax rates and provide notice of any such changes.

k. Establish effective dates for the application of local jurisdictional boundary changes to local sales and use tax rates and provide notice of such changes.

l. Provide monetary allowances to sellers and certified service providers as outlined in the agreement.

m. Certify compliance with the agreement before entering into the agreement and maintain compliance with the agreement.

n. Adopt, with the signatory states, a uniform policy for certified service providers that protects consumer privacy and maintains tax information confidentiality.

o. Appoint, with the signatory states, an advisory council (consisting of private-sector representatives and representatives of nonsignatory states) to consult with in administering the agreement.

Limited Binding and Beneficial Effect; Relationship to State Law. The statutes would specify that the agreement would bind, and inure to the benefit of, only the signatory states. Any benefit that a person may receive from the agreement would have to be established by Wisconsin state law and not by the terms of the agreement.

No person would have any cause of action or defense under the agreement or because of DOR entering into the agreement. No person could challenge any action or inaction by any department, agency, other instrumentality or political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

No law of Wisconsin, or application of such law, could be declared invalid on the ground that the law, or application of the law, is inconsistent with the agreement. No provision of the agreement in whole or part would invalidate or amend any law of this state and the state becoming a signatory to the agreement would not amend or modify any state law.

Seller and Third-Party Liability. A certified service provider, as defined above, would be considered the agent of the seller with whom the provider has contracted and would be liable for the sales and use taxes that are due the state on all sales transactions that the provider processes for a seller, unless the seller has misrepresented the type of items that the seller sells or committed fraud.

Sellers would be subject to audits on transactions processed by a certified service provider only if there was probable cause to believe that the seller committed fraud or made a material misrepresentation. Sellers would continue to be subject to audits on transactions that are not processed by a service provider. Signatory states could jointly check the seller's business system and review the seller's business procedures to determine if the certified service provider's system is functioning properly and to determine the extent to which the seller's transactions are being processed by the certified service provider.

A person who provides a certified automated system (defined above) would be responsible for the system's proper functioning and would be liable to the state for tax underpayments that result from errors in the system's functioning. A seller that uses a certified automated system would be responsible and liable to the state for reporting and remitting sales tax and use tax.

A seller that has a proprietary system for determining the amount of tax that is due on transactions and that has signed an agreement with the signatory states establishing a

performance standard for the system would be liable for the system's failure to meet the performance standard.

The streamlined sales tax project is intended to establish more uniform sales tax systems among states in order to ease the administrative burden for multi-state retailers. A primary objective of the project is to encourage retailers that do not have nexus with participating states to voluntarily collect and remit sales and use taxes on internet, mail-order and other remote sales. The provisions described above would not have the effect of committing Wisconsin to any changes negotiated as efforts to arrive at a finalized streamlined sales and use tax agreement proceed. Any changes finalized through continued negotiations among the states (such as modifications to the definitions of taxable and nontaxable goods and services) would have to be approved by the Legislature through separate conforming legislation.

[Act 16 Sections: 2245dm and 2246p]

Public Utility Taxes

1. TAXATION OF WHOLESALE MERCHANT PLANTS AND WHOLESALE ELECTRICITY SALES [LFB Papers 828 and 115]

Governor: Modify the definition of a light, heat and power company (LHP) to include a wholesale merchant plant. In addition, reduce the gross revenues license fee on wholesale electricity sales for a six-year period beginning with gross revenues from calendar year 2003.

Under current law, LHPs (including qualified wholesale electric companies) and electric cooperatives are generally subject to a 3.19% gross revenues license fee on revenues from electricity sales under Chapter 76 of the statutes. In the case of an LHP that is not a qualified wholesale electric company, if the company's property is located entirely within a single town, village or city, it is subject to local assessment and taxation. For municipal LHPs subject to the license fee, the gross revenues from operations within the municipality are subtracted from total gross revenues for the purpose of determining the fee.

A qualified wholesale electric company is a generation facility in Wisconsin that is operated for the sale of electricity to an entity that sells electricity directly to the public. In addition, to meet the definition of a qualified wholesale electric company, the company must sell at least 95% of its net production of electricity to an entity that sells electricity directly to the public and must have a minimum total power production capacity of 50 megawatts.

The gross revenues license fee is paid in semi-annual installments of either 55% of the tax on gross revenues for the prior year or 50% of the estimated tax on gross revenues for the current year on May 10 and November 10. On the following May 10, a final adjustment

payment or refund is made to reconcile the two prior installment payments with the actual assessment.

Currently, the 3.19% gross revenues license fee applies to sales of electricity whether they are wholesale or retail sales. However, certain deductions can be made for the cost of power purchased by a public utility for resale. A private LHP may deduct from its gross revenues either: (a) the actual cost of power purchased for resale if the company purchases more than 50% of its electric power from a nonaffiliated utility that reports to the Public Service Commission (PSC); or (b) 50% of the actual cost of power purchased for resale if that company purchases more than 90% of its power and has less than $50 million in gross revenues. An electric cooperative may deduct from its gross revenue the actual cost of power for resale, as long as it purchases more than 50% of the power it sells.

The bill would specify that, for the purposes of the gross revenues license fee imposed on LHPs in lieu of local property taxes, the term "light, heat and power company" would include a wholesale merchant plant, as defined under the statutes regulating public utilities. [A "wholesale merchant plant" means electric generating equipment and associated facilities in this state that do not provide retail service. A wholesale merchant plant may be owned by an affiliated interest of a public utility only with the approval of the PSC.] Under these provisions, all wholesale merchant plants would be subject to the gross revenues license fee imposed under Chapter 76. [Under current law, a wholesale merchant plant satisfying the minimum capacity requirement under the definition of a qualified wholesale electric company would generally be subject to the 3.19% gross revenues license fee. Any merchant plant not satisfying this definition would be subject to local property taxation.] These provisions would also exclude a wholesale merchant plant, regardless of its production capacity, from the current law provision imposing local property assessment and taxation (rather than the license fee) on the property of an LHP located entirely in a single municipality.

The bill would exclude gross revenues from wholesale electricity sales from the current 3.19% license fee on LHPs and electric cooperatives. Instead, under a newly created section, a license fee at the rate of 1.59% would be imposed (for a specified period) on gross revenues from wholesale sales of electricity by an LHP or electric cooperative that owns an electric utility plant. The fee would generally be administered under current law provisions for administering the 3.19% license fee. The new section would specify that the term "apportionment factor" would have the same meaning as that used for the assessment on other LHPs. [The apportionment factor combines payroll, property and sales factors to determine the fraction of a company’s total gross revenues attributable to Wisconsin and therefore subject to the license fee. It should be noted that the bill would also modify the definition of the "payroll factor" for all LHPs. These provisions are described in this document under "Public Utility Holding Companies Affiliated With Light, Heat and Power Companies," which is in the same section as this entry.]

The reduced rate on wholesale electricity sales would apply to license fee assessments on revenues generated during calendar years 2003 through 2008. Assessments on such revenues

would occur on or before May 1 of the year following the calendar year in which the revenues are generated (May, 2004, through May, 2009). According to the administration, it was intended that the license fee for gross revenues from wholesale electricity sales during calendar year 2009 and thereafter would again be subject to the 3.19% license fee, as under current law. However, as drafted, the bill could be interpreted as permanently excluding wholesale electricity sales from the 3.19% license fee beginning in 2009.

In addition to the license fee change, the bill would modify current utility aid provisions under the shared revenue program to apply to property of LHPs subject to the proposed license fee for selling electricity at wholesale and to property of wholesale merchant plants. The shared revenue provisions are described in this document under the sections for "Shared Revenue and Tax Relief -- Property Taxation."

The proposed reduced rates on wholesales sales of electricity would take effect with the May 1, 2004, tax assessment, which is based on gross revenues from calendar year 2003. The remaining provisions would take effect on January 1, 2002. The administration estimated that there would be no fiscal effect during 2002-03. The annualized effect, starting in 2003-04, was estimated as a reduction in general fund tax revenues of $7,800,000 (in 2002-03 dollars). [However, the due date for the first installment of the May 1, 2004, assessment is in May, 2003. Therefore, the provisions would result in reduced tax collections in 2002-03 of approximately 50% of the annualized amount.]

Joint Finance/Legislature: Make the following changes to the Governor's proposal:

Wholesale Merchant Plants. Modify the Governor's provisions that would: (a) change the definition of a light, heat and power company to include a wholesale merchant plant as defined under the statutes regulating public utilities [Chapter 196]; and (b) provide a reference to a wholesale merchant plant at each reference to taxation of a QWEC under the utility tax and shared revenue provisions of the bill.

Instead, change the definition of a QWEC under the utility tax statutes to clarify that a QWEC includes a wholesale merchant plant, as defined under Chapter 196, as long as the merchant plant has a minimum total power production capacity of 50 MW. Eliminate the additional references to a wholesale merchant plant under the utility tax and shared revenue provisions of the bill.

Tax Rate on Wholesale Electricity Sales. Approve the Governor's recommendation to reduce the gross revenues tax for wholesale electricity sales to 1.59%, with a one-year delay in the date to which the lower rate would apply. Under these provisions, the reduced rate on wholesale sales of electricity would apply to tax assessments starting May 1, 2005, and ending with the assessment on May 1, 2010 (these assessments would be based on gross revenues from calendar years 2004 through 2009). These provisions would also clarify that the tax rate on wholesale electricity sales would return to 3.19% for revenues from such sales for calendar year 2010 and thereafter. There would be no fiscal effect in the 2001-03 biennium. However, based on existing

wholesale sales in the state, the cost of these provisions for the applicable tax periods is estimated at $9,000,000 annually.

In addition, eliminate the provisions related to utility aid under the shared revenue program. These provisions are described in this document under the sections for "Shared Revenue and Tax Relief--Property Taxation."

[Act 16 Sections: 2234m, 2234n, 2235, 2236, 2237, 2282, 2285 and 9444(2p)]

2. GROSS RECEIPTS TAX ON CAR LINE COMPANIES

Assembly: Reduce the gross receipts tax on car line companies from 3% to 2.5% of gross receipts of such companies in this state.

A "car line company" is any person, other than a person operating a railroad, that is engaged in the business of leasing or furnishing car line equipment to a railroad. "Car line equipment" includes railroad cars and other equipment used in railroad transportation. Under current law, a 3% gross receipts tax is levied on car line companies in lieu of all property taxes on their car line equipment.

This provision would first apply to the 2002 assessment year, which is based on gross receipts from calendar year 2001. It is estimated that the provision would reduce general fund tax revenues by $100,000 in 2001-02 and in 2002-03.

Conference Committee/Legislature: Delete provision.

3. PUBLIC UTILITY HOLDING COMPANIES AFFILIATED WITH LIGHT, HEAT AND POWER COMPANIES

Governor/Legislature: Specify that management and service fees paid by a light, heat and power company to an affiliated public utility holding company would be considered to be compensation paid by the LHP for the purpose of the payroll factor used to apportion gross revenues to the state.

Under current law, a license fee based on 3.19% of gross revenues from sales of electricity, water and steam and 0.97% of gross revenues from sales of gas is imposed on LHPs under Chapter 76 of the statutes. An apportionment factor is applied to a company's gross revenues (less certain deductions) to determine Wisconsin taxable revenues, based on the shares of a company's total payroll, property and sales that are in Wisconsin.

Chapter 70 exempts from local taxation the property of LHPs and other companies taxed under Chapter 76. However, real and tangible personal property that is used in part for such a company's operating purposes and in part for nonoperating purposes is subject to local assessment and taxation at the percentage of full market value that represents the extent of the

property's use for nonoperating purposes. Public utility holding companies do not meet the definition of light, heat and power companies and are not taxed under Chapter 76. As a result, the property of public utility holding companies is subject to general property taxes.

The bill would provide that management and service fees paid to an affiliated public utility holding company would be included in "compensation" paid by an LHP for the purpose of determining the payroll factor used in apportioning gross revenues of the LHP to the state. [Currently, the statutes do not define "compensation" to be used in determining the payroll component of the apportionment factor. However, the term is used in connection with payments made to individuals.] As a result of this provision, for an LHP that pays management and service fees to an affiliated public utility holding company, a higher proportion of the LHP's payroll would be in the state. This would, in turn, increase the percentage of such a company's gross revenues allocated to Wisconsin for utility tax purposes.

In addition, a separate provision would exempt from local property taxes that portion of a public utility holding company's property (other than land) that is used to provide services to an LHP affiliated with the holding company. [The property tax provisions are described in this document under the section on "Shared Revenue and Tax Relief -- Property Taxation."]

The modification to the payroll factor for LHPs would first apply to license fee assessments as of May 1, 2002, which are based on gross revenues from calendar year 2001. The administration estimates that these provisions would have a minimal effect on state general fund tax revenues.

[Act 16 Sections: 2103, 2111, 2112, 2234, 3749 and 9344(27)&(28)]

4. PROPERTY TAX ASSESSMENT OF TELEPHONE COMPANIES

GPR-REV	- $22,500

Governor/Legislature: Provide that, for the purpose of taxation based on property value, classification of real and personal property used in part for the operation of a telephone company and in part for other uses would be based on the predominant use of the property.

Under current law, public utilities are generally subject to state taxation under Chapter 76 of the statutes, in lieu of general local property taxation under Chapter 70. Certain utilities, including telephone companies, are taxed on the basis of property value (ad valorem). Others are taxed on the basis of gross receipts.

Chapter 70 exempts from local taxation the property of telephone companies and other companies taxed under Chapter 76. However, real and tangible personal property that is used in part for such a company's operating purposes and in part for nonoperating purposes is subject to local assessment and taxation at the percentage of full market value that represents the extent of the property's use for nonoperating purposes. For ad valorem taxpayers, the property used for the company's operating purposes is assessed by the state and subject to the state ad valorem tax.

The bill would remove the references to a telephone company under the current law property tax exemption for utilities taxed under Chapter 76, including the provision that imposes local property taxes on the portion of property used for nonoperating purposes. Instead, the bill would create a new paragraph under Chapter 70 specifying the following: (a) if real or tangible personal property is used more than 50% (as determined by DOR) in the operation of a telephone company that is subject to tax under Chapter 76, then DOR would assess the property and the property would be exempt from the general property tax; and (b) if real or tangible personal property is used less than 50% (as determined by DOR) in the operation of a telephone company taxed under Chapter 76, then the property would be assessed and taxed locally. The bill would also modify the Chapter 76 subchapter on ad valorem taxes on telephone companies to specifically exclude any property that is used less than 50% in the operation of a telephone company.

These provisions would first apply to property tax assessments as of January 1, 2003. The administration estimates that the fiscal effect would be a reduction in general fund tax revenues of $22,500 in 2002-03.

[Act 16 Sections: 2113, 2114, 2243 and 9344(5)]

5. AD VALOREM TAX EXEMPTION FOR CASH REGISTERS AND FAX MACHINES

Conference Committee/Legislature: Create a property tax and a state ad valorem tax exemption for fax machines (except those that are also copiers) and cash registers, effective with tax assessments as of January 1, 2003.

Under current law, the following types of public utilities are subject to state-imposed, ad valorem taxes (based on property value) in lieu of local property taxes: air carrier, conservation and regulation, municipal electric, pipeline, railroad and telephone companies. Under these provisions, fax machines (except those that are also copiers) and cash registers would be exempt from ad valorem taxes on such companies, beginning with tax assessments as of January 1, 2003. It is estimated that the provisions would have a minimal fiscal effect.

[Act 16 Sections: 2108s, 2231n, 2243 and 9344(17f)]

Excise Taxes and Regulation of Alcohol and Tobacco

1. INCREASE IN THE CIGARETTE EXCISE TAX

	Jt. Finance (Chg. to Base)	Legislature (Chg. to JFC)	Net Change
GPR-REV	$66,000,000	$64,500,000	$130,500,000

Joint Finance: Increase the cigarette tax by 9 cents per pack (from 59 cents to 68 cents), effective October 1, 2001. Estimate additional general fund tax revenues of $30,800,000 in 2001-02 and $35,200,000 in 2002-03 as a result of the increase.

Senate: Increase the tax by an additional 13 cents (to 81 cents per pack), effective October 1, 2001. Estimate additional general fund revenues from the 13-cent increase at $43,300,000 in 2001-02 and $49,300,000 in 2002-03.

Assembly: Delete provision.

Conference Committee/Legislature: Modify the previous action by the Joint Finance Committee to provide for an additional 9-cent increase in the cigarette excise tax (to 77 cents per pack), effective October 1, 2001. Estimate additional general fund revenues from the 9-cent increase at $30,100,000 in 2001-02 and $34,400,000 in 2002-03, for a total increase of $60,900,000 in the first year and $69,600,000 in the second year.

[Act 16 Sections: 2842m, 2842n and 9444(5e)]

2. INCREASE IN THE TOBACCO PRODUCTS TAX

	Jt. Finance (Chg. to Base)	Legislature (Chg. to JFC)	Net Change
GPR-REV	$11,100,000	- $5,550,000	$5,550,000

Joint Finance: Increase the tobacco products tax from 20% of the manufacturer's price to 30%, effective October 1, 2001. Estimate additional general fund tax revenues of $4,600,000 in 2001-02 and $6,500,000 in 2002-03 as a result of the increase.

Senate/Assembly: Delete provision.

Conference Committee/Legislature: Modify the increase in the tobacco products tax approved by the Joint Finance Committee to 25% of the manufacturer's price instead of 30%, effective October 1, 2001. Compared to the Joint Finance Committee's version of the budget bill, this change would reduce general fund tax revenues by $2,300,000 in 2001-02 and $3,250,000 in 2002-03. The net fiscal effect would be a revenue increase of $2,300,000 in the first year and $3,250,000 in the second year.

[Act 16 Sections: 2848m, 2848n and 9444(5c)]

3. CIGARETTE TAX REFUNDS

	Governor (Chg. to Base)	Jt. Finance (Chg. to Gov)	Legislature (Chg. to JFC)	Net Change
GPR	- $420,000	$2,400,000	$2,500,000	$4,480,000

Governor: Reduce funding for cigarette tax refunds by $210,000 in 2001-02 and in 2002-03 to reflect lower estimates of the amount required to reimburse Native American tribes under present law. Currently, the tribes receive a refund of 100% of the cigarette tax on cigarettes sold to Native Americans and 70% of the tax on sales made to non-Native Americans on reservations or trust lands. With these reductions, total funding of $10,100,000 per year would be provided.

Joint Finance: Estimate additional cigarette excise tax refunds to Native American tribes resulting from the 9-cent increase in the cigarette excise tax at $1,000,000 in 2001-02 and $1,400,000 in 2002-03. Total funding would be $11,100,000 in the first year and $11,500,000 in the second year.

Senate: Estimate additional refunds of $1,500,000 in 2001-02 and $2,000,000 in 2002-03 due to the additional 13-cent cigarette tax increase adopted by the Senate. Total funding would be $12,600,000 in the first year and $13,500,000 in the second year.

Assembly: As a result of the deletion of the 9-cent increase in the excise tax previously approved by the Joint Finance Committee, reduce funding by $1,000,000 in 2001-02 and $1,400,000 in 2002-03, compared to the Joint Finance provisions. Total funding would be $10,100,000 per year.

Conference Committee/Legislature: Estimate additional excise tax refunds to Native American tribes resulting from the additional 9-cent increase (over and above the 9-cent increase previously approved by the Joint Finance Committee) at $1,100,000 in 2001-02 and $1,400,000 in 2002-03. Total funding would be $12,200,000 in the first year and $12,900,000 in the second year.

4. INCREASE IN DISCOUNT ON PURCHASES OF TAX STAMPS BY CIGARETTE MANUFACTURERS AND DISTRIBUTORS

Assembly: If an increase in the cigarette excise tax from the current rate of 59 cents per pack is approved, raise the current discount of 1.6% that manufacturers and distributors receive on purchases of tax stamps to 2.0%. Under the other provisions adopted by the Assembly, this provision would have no fiscal effect, because the cigarette tax would not be increased.

Conference Committee/Legislature: Delete provision.

5. REGULATION OF CIGARETTE SALES [LFB Paper 121]

Governor: Modify provisions regulating the sale of cigarettes as follows:

Prohibit affixing cigarette tax stamps to: (a) a cigarette package on which a statement, label, stamp, sticker or notice indicates that the manufacturer did not intend the cigarettes to be sold, distributed or used in the U.S.; (b) a cigarette package that is labeled as required under federal law as not intended for consumption in the U.S.; (c) a package that is not labeled as provided under federal law; (d) a package that is modified by a person who is not the manufacturer; or (e) cigarettes that are imported into the U.S. after December 31, 1999, in violation of federal law.

Prohibit altering cigarette packages before the sale or distribution to the ultimate consumer so as to remove, conceal or obscure any statement, label, stamp, sticker or notice described above or any warning that is specified or conforms with federal requirements regarding warnings prescribed by the U.S. Surgeon General for cigarette packages. Prohibit affixing cigarette tax stamps to any package that is so altered.

Specify that any person could bring an action for illegally affixing tax stamps or altering cigarette packages under the provisions outlined above for actual damages sustained as a result of the violation and for injunctive relief. The court could order the violator to pay the prevailing party's costs and reasonable attorney fees. The trier of fact could increase recovery to an amount not exceeding three times the actual damages if the trier determines that the violation was willful.

Prohibit the possession of more than 400 cigarettes on which tax stamps have been unlawfully affixed under the above provisions; and the sale and distribution of such cigarettes; except for cigarettes that may be brought into the U.S. for personal use and cigarettes that are sold or intended for sale by a duty-free enterprise, as provided under federal law. Provide the following penalties for violations of this provision: (a) for fewer than 6,000 cigarettes, a fine of up to $200, imprisonment for up to six months or both; (b) for 6,000 to 36,000 cigarettes, a fine of up to $1,000, imprisonment for up to one year or both; or (c) for more than 36,000 cigarettes, a fine of up to $10,000, imprisonment for up to three years or both. These penalties currently apply to unlawful possession of untaxed cigarettes.

Prohibit distributors from affixing tax stamps to cigarette packages unless the distributor certifies to DOR, in a manner prescribed by the Department, that the distributor purchases cigarettes directly from a manufacturer. In addition, specify that the definition of "manufacturer" under the cigarette tax statutes would include an authorized agent of a cigarette manufacturer.

Joint Finance/Legislature: Approve the Governor's recommendations regarding the regulation of cigarette sales with the following modifications: (a) expand authority for state enforcement action by allowing the state to take action against every person in the gray-market distribution chain rather than against only the tax stampers or against tax stamped product; (b)

prohibit the sale of cigarettes for which the manufacturer has not submitted ingredient information to the federal government, as required by law; (c) revise the Governor's proposal to reflect the provisions of the new federal gray market law and the federal labeling law, that requires cigarettes sold in the U.S. to bear the Surgeon General's warning; (d) clarify that the prohibitions on gray-market cigarettes would not apply to cigarettes imported into the U.S. for personal use or to cigarettes sold at duty free stores, unless the cigarettes are brought into the U.S. for resale; (e) eliminate the provision in the bill that would allow possession of up to 400 [20 cartons] of gray-market cigarettes; (f) narrow the right to bring an action for appropriate injunctive relief from "any person" to any person who sells, distributes or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation; and (g) require the destruction of all gray-market cigarettes seized by the state.

[Act 16 Sections: 2842, 2843 thru 2847n]

6. REGULATION OF ALCOHOLIC BEVERAGES [LFB Paper 120]

Governor: Modify statutory provisions regarding the regulation of sales of alcoholic beverages as outlined below.

Retail Beer and Liquor Licenses. The bill would prohibit municipalities and DOR from issuing a retail license or permit for the sale of beer, wine or liquor for a premises that is already covered by the same kind of current license or permit unless all of the following apply:

a. The applicant provides proof that, not less than 15 days nor more than 30 days before submitting the application, the current licensee has provided the applicant the name and address of each beer wholesaler to whom the current licensee is indebted.

b. The applicant provides proof that, not less than 15 days nor more than 30 days before submitting the application, the applicant has notified each such wholesaler of the name and address of the current licensee and that the applicant is applying for the license or permit.

c. The current licensee is not in violation of statutory restrictions regarding purchases of beer, wine or liquor on credit unless the violation consists of an indebtedness discharged in bankruptcy.

d. The current licensee is not the subject of any proceeding related to revocation, suspension or nonrenewal of an alcohol license or permit.

This provision would first apply to an application for a license or permit submitted on the first day of the 12th month beginning after publication.

Sales of Alcohol by Secured Third Parties. Under current law, no license or permit is required for the sale of alcohol by a secured third party in good faith under the terms of a security agreement if the sale is not for purpose of avoiding state alcoholic beverage regulations or the state excise taxes on alcoholic beverages. Such sales must be in the ordinary course of the

business of lending money secured by a security interest in alcoholic beverages, warehouse receipts or other evidence of ownership.

The bill would specify that a sale of beer under this provision would have to be made within 30 days after the third party takes possession of the beer unless the third party demonstrates good cause why a sale in compliance with the statutes on secured transactions or the security agreement cannot be made within this time period. This restriction would first apply to security interests entered into on the day after publication.

Beer Shipped from Out of State. Under current law, DOR must issue out-of-state shippers' permits, which authorize the permittee to ship beer only to licensed wholesalers. No person may receive beer in this state that has been directly shipped from outside this state by any person other than the holder of an out-of-state shipper's permit. All shipments of beer to a wholesaler in this state, whether shipped from inside or from outside this state, must be unloaded in and distributed from the wholesaler's warehouse in this state.

The bill would require DOR to issue a written warning to any person located outside Wisconsin that sells or ships beer into this state in violation of these provisions if the person has not previously received a warning. Any person located outside of this state that sells or ships beer in violation of these provisions and that has received a warning from DOR would be subject to a fine of up to $10,000, imprisonment for up to two years or both. This provision would first apply to violations on the first day of the sixth month beginning after publication.

Currently, upon request by the Secretary of DOR, the Attorney General may represent the state or assist a local district attorney in prosecuting any case arising from the statutes regulating the sale of alcoholic beverages. The bill would also authorize the Attorney General, upon request by the Secretary of DOR, to commence an action to enforce the provisions regarding shipments of beer to Wisconsin wholesalers in the Dane County circuit court.

Operator's License Training Course. Currently, in order to obtain an alcoholic beverages operator's license (bartender's license), an individual may be required to complete a responsible beverage-server training course that is offered by a technical college district and that conforms to guidelines specified by the WTCS Board, or a comparable course that is approved by DOR or the Educational Approval Board. The bill would specify that such courses could include computer-based training and testing.

Gifts Provided by Brewers or Wholesalers to Retailers. Current law, with a number of exceptions, prohibits brewers or wholesalers from furnishing, giving, lending, leasing or selling furniture, fixtures, fittings, equipment, money or other things of value to any campus or person holding a Class "B" license or permit (for the retail sale of beer for on-premises consumption), or to any person for the use, benefit or relief of any campus or Class "B" retailer.

One exception to this provision is that a brewer or wholesaler may provide, for placement inside the premises, signs, clocks or menu boards with an aggregate value of not more than $150. Each recipient must keep an invoice or credit memo containing the name of the donor

and the number and value of items received and must make these records available to DOR for inspection upon request. The bill would modify this provision by increasing the dollar limit from $150 to $2,500. In addition, both the donor and the recipient would be required to keep written documentation containing the name of the recipient and donor and the number and value of items provided, and make these records available to DOR.

Another exception under current law is that a brewer or wholesaler may provide signs made from paper or cardboard for placement inside the premises. The bill would modify this provision to include signs made from plastic or vinyl or from other materials with a useful life of less than one year. In addition, the bill would specify that signs could be provided without regard to the $2,500 limit ($150 under current law) on the aggregate value of items provided by brewers and wholesalers.

A third exception permits brewers and wholesalers to purchase advertising for fair compensation from a bona fide national or statewide trade association which derives its principal income from membership dues of Class "B" retailers. The bill would also allow brewers and wholesalers to purchase advertising from any person who does not hold an alcoholic beverages license or permit and who conducts a bona fide advertising, promotional or media business, to promote brewer- or wholesaler-sponsored sweepstakes, contests or promotions on the premises of Class "B" retailers if: (a) the advertising or promotion includes at least five unaffiliated retailers; and (b) the retailer on whose premises the event will occur does not receive compensation, directly or indirectly, for hosting the event. In addition, the bill would allow brewers and wholesalers to conduct their own sweepstakes, contests or promotions on the premises of Class "B" retailers if the above conditions are satisfied.

An additional provision of current law allows brewers and wholesalers to provide, in this state, reasonable business entertainment that is deductible under federal tax law to a Class "B" retailer by: (a) providing tickets or free admissions to athletic events, concerts or similar activities; or (b) providing food and beverages and paying for local ground transportation in connection with such activities and business meetings. However, the value of business entertainment provided may not exceed $75 per day. The bill would increase this limit to $500 per day and specify that such business entertainment could be provided on no more than 12 days per year.

Current law also specifically permits brewers that produce 350,000 or more barrels of beer annually to contribute money or other things of value to a bona fide national or statewide trade association that derives its principal income from membership dues of Class "B" licensees. The bill would modify this provision by allowing any brewer to make such contributions, allowing wholesalers to make such contributions and allowing contributions to local trade associations.

Fair Dealership Provisions for Beer Wholesalers. Under current provisions of the Fair Dealership Law (Chapter 135 of the statutes), the grantor of a dealership may not (directly or through any officer, agent or employee) terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor of the dealership. In general, a "dealership" is a contract or

agreement by which a person is granted the right to sell or distribute goods or services or use a trade name, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services. The bill would specify that a contract or agreement by which an alcoholic beverages wholesaler is granted the right to sell or distribute beer would be a dealership, even if no community of interest exists. Such agreements would be subject to the provision described above regarding the termination of a dealership. A similar provision exists under current law for wholesalers of intoxicating liquor, but not for beer wholesalers.

The bill would also create a separate provision in Chapter 135 for dealerships that involve beer wholesalers. Under the bill, any person who assumes, in whole or in part, such a dealership following the grantor's termination, cancellation, or nonrenewal in whole or in part of a prior dealership agreement would be required to compensate the prior dealer for the fair market value of that portion of the dealership unless the grantor terminated the dealership for any of the following reasons: (a) the prior dealer engaged in material fraudulent conduct or made material and substantial misrepresentations in its dealings with the grantor or with others related to the dealership; (b) the prior dealer was convicted of, or pleaded no contest to, a felony crime substantially related to the dealer's ability to operate the dealership; or (c) the prior dealer knowingly distributed dealership products outside the territory authorized by the grantor.

The grantor would be required to advise the person assuming the dealership of these obligations prior to the person's assumption of the dealership. If the person assuming the dealership and the prior dealer agree in writing to the fair market value of that portion of the dealership, the person assuming the dealership would have to pay the agreed upon sum within 30 days of the agreement. If no written agreement for compensation of the prior dealer is reached within 30 days after the grantor's termination of the prior dealership agreement, the prior dealer could submit the dispute for binding arbitration through a nationally recognized arbitration association. Unless the parties agree otherwise, the arbitration would be conducted on an expedited basis to the extent an expedited proceeding is reasonably available through the arbitration association, and each party would have to pay an equal share of the cost of the arbitration.

These provisions would first apply to dealerships entered into on the day after publication.

Joint Finance: Modify the provisions of the bill relating to the regulation of alcoholic beverages as follows:

Sale of Alcohol by Secured Third Parties. Reduce the period during which a secured third party may sell beer without a license from 30 days to 15 days.

Gifts Provided by Brewers or Wholesalers to Retailers. Modify the provisions regarding gifts provided by brewers or wholesalers to retailers so that the aggregate value of signs, clocks, or menu boards given by a brewer or wholesaler may not exceed $2,500 at "any given time" rather than "during any calendar year."

Modify the record-keeping requirements under the provisions regarding gifts by brewers or wholesalers to retailers so that only the recipient, not the donor and the recipient, must keep written records of the number of and value of items received, subject to inspection by the Department of Revenue.

Modify the provisions regarding gifts of signs made by brewers or wholesalers to retailers to allow signs made of plastic, vinyl "or other like material" rather than plastic, vinyl or "signs made from other materials with a useful life of less than one year."

Delete the Governor's provisions regarding advertising and promotional events held on retailers' premises. Instead, allow brewers and wholesalers to purchase advertising from a non-licensed third party, such as a radio station or promoter, which conducts national or regional sweepstakes, contests or promotions at the premises of retailers which sell the brewer's or wholesaler's products. In general, specify that the non-licensed third party could promote the event or activity, including the location of the event or activity, if the advertisement lists four or more unaffiliated retail licensees, and if no money is given to the retail licensee for the privilege of conducting the sweepstakes, contest or promotion. For brewers that produce less than 30,000 barrels of beer annually, allow such promotion if only one retailer is listed in the advertisement. Specify that brewers and wholesalers could conduct their own national or regional sweepstakes, contests or promotions on the premises of retailers if the conditions specified above are satisfied.

Modify the bill's provisions regarding the provision of entertainment by brewers and wholesalers to retailers to provide that entertainment would be limited to no more than eight days annually, rather than 12 days annually.

Specify that no Class "A" or Class "B" licensee may condition the purchase of beer from a brewer or wholesaler upon the furnishing of anything of value by the brewer or wholesaler to the licensee or to any person for the use, benefit or relief of any licensee.

Fair Dealership Provisions for Beer Wholesalers. Establish the provisions of the bill relating to compensation provided to beer wholesalers following the assumption of a dealership that has been terminated, cancelled or not renewed in Chapter 125 of the Statutes (relating to alcoholic beverages) rather than Chapter 135 (relating to dealership practices). In addition, specify that the compensation provisions would not apply in cases where the wholesaler has terminated its relationship with the brewer. Provide that termination would occur if: (a) the wholesaler has quit the business, whether due to death, retirement or sale of the business; or (b) the wholesaler has not placed an order within the previous 30 days.

Senate/Legislature: Delete the provisions of Joint Finance related to retail beer and liquor licenses. The deleted provisions would prohibit municipalities and the Department of Revenue from issuing a retail license or permit for the sale of beer, wine or liquor for a premises that is already covered by the same kind of current license or permit unless several conditions have been met, such as a requirement that the applicant provide proof, prior to submitting the application, that the current licensee has provided the applicant the name and address of each

beer wholesaler to whom the current licensee is indebted and proof that the applicant has notified each wholesaler of the name and address of the current licensee.

Delete the provisions regarding beer shipped from out of state. These provisions would require DOR to issue a written warning to any person located outside Wisconsin that violates the beer shipping laws if the person has not previously received a warning. Parties in violation of out-of-state shipping provisions and who have received a warning would be subject to a fine of up to $10,000, imprisonment for up to two years or both.

Delete the fair dealership provisions for beer wholesalers, including the provisions that would require beer wholesalers to receive compensation if a dealership agreement is terminated.

[Act 16 Sections: 2802, 2804, 2806 thru 2812g and 9344(24)]

7. WINE OR LIQUOR BROUGHT INTO STATE FROM A FOREIGN COUNTRY BY A MEMBER OF THE ARMED FORCES

Assembly/Legislature Increase from six liters to 16 liters the aggregate amount of wine or liquor that may be brought into the state without paying the state excise tax by certain members of the armed forces. The exemption applies to state residents who are members of the national guard, the U.S. armed forces or a reserve component of the U.S. armed forces and who leave a foreign country after spending at least 48 hours in that country on duty or for training. Specify that this provision would take effect on the first day of the second month beginning after publication of the bill.

[Act 16 Sections: 2841m and 9444(3c)]

8. MODIFY LAWS REGARDING WINE SHIPMENTS INTO WISCONSIN

Senate: Modify current statutes relating to the shipping of wine into Wisconsin as follows:

a. Require any winery located outside this state that ships wine into Wisconsin under the reciprocal wine shipment provisions to have a business tax registration certificate issued by DOR and require the winery's current license from its state of domicile to be filed with the registration request.

b. Require in-state and out-of-state wineries that ship wine across state lines under the reciprocity provisions to file an annual report with DOR identifying the product shipped, the quantity shipped, the price of the product shipped and the customer by name, address and birth date to whom the product was shipped. Specify that the report would be due by January 31 of each year for shipments during the preceding year. Provide that the first report would be due on January 31, 2003, for shipments occurring in calendar year 2002.

c. Require DOR to biennially report to the Joint Committee on Finance on the amount of wine shipped into and out of Wisconsin under the reciprocity provisions and the tax consequences to the state.

Under current law, DOR is required to issue out-of-state shippers' permits, which authorize persons located outside this state to sell or ship intoxicating liquor (including wine) into Wisconsin. In general, intoxicating liquor may not be shipped into Wisconsin unless the entity shipping the liquor has an out-of-state shipper's permit, and liquor may be shipped into this state only to a person holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol or medicinal alcohol permit.

However, wineries located outside of this state may ship wine into Wisconsin if the winery is located in a state that has a reciprocal agreement with this state. An out-of-state shipper's permit is not required. Shipments of wine under the reciprocity provision must be to individuals who are of the legal drinking age, and the shipping container must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. A person who receives wine under this provision may not sell it or use it for a commercial purpose. No individual may resell the wine or receive more than nine liters of wine annually.

Under the reciprocity agreements, Wisconsin taxes wine shipped from in-state wineries to other states and the other states impose their taxes on wine shipped into Wisconsin. Wisconsin currently has entered into reciprocity agreements with California, Oregon and Washington.

Conference Committee/Legislature: Adopt Senate provisions with the following modifications:

a. Specify that wineries would pay a $10 annual fee for a business tax registration certificate rather than the general fee of $20 for the initial certificate and $10 biennially for renewal.

b. Provide that the annual reporting requirements applicable to out-of-state wineries that ship under the reciprocal wine provisions [requiring disclosure of the product shipped, the quantity shipped, the price of the product shipped and the customer to whom the product was shipped by name, address and birth date] be governed by the same statutory provisions that regulate access to information provided by taxpayers on state tax forms [s. 71.78].

c. Require any person who receives wine shipped under the reciprocal provisions to acknowledge delivery of the wine in writing. Provide that a signature on the delivery form of the common carrier by a person of legal drinking age acknowledges delivery in writing.

d. Eliminate the provision requiring DOR to report biennially to the Joint Finance Committee on the amount of wine shipped into and out of Wisconsin under the reciprocal provisions and the tax consequences to the state of such shipments.

[Act 16 Sections: 2812t thru 2812x and 9444(5am)]

9. WINE SAMPLING ON "CLASS A" PREMISES

Assembly/Legislature: Permit the provision of free wine taste samples, between the hours of 10 a.m. and 6 p.m., of not more than three fluid ounces each by a "Class A" licensee to customers and visitors for on-premises consumption. Provide that no "Class A" licensee could: (a) provide more than two taste samples per day to any one person; (b) provide taste samples under these provisions to any underage person; and (c) provide as taste samples wine the licensee did not purchase from a wholesaler. Specify that municipalities could prohibit wine tastings under this provision. [A "Class A" license authorizes off-premises sales of liquor and wine.]

[Act 16 Section: 2802m]

10. OWNERSHIP OF RESTAURANTS BY BREWERS

Assembly: Permit any brewer to possess a Class "B" license (for on-premises sales of beer) for a maximum of 20 restaurants if: (a) in each restaurant the sale of alcohol accounts for less than 60% of the restaurant's gross receipts; and (b) no beer produced by the brewer is offered for sale in any of the restaurants.

Under current law, any brewer may maintain and operate one place on brewery premises and one place on real estate owned by the brewer or a subsidiary or affiliated corporation for on-premises sales of beer. In addition, small brewers (those that manufacture less than 4,000 barrels of beer annually) may possess a Class "B" license for up to four restaurants if: (a) the sale of alcohol in each restaurant accounts for less than 50% of the restaurant's gross receipts; and (b) each restaurant offers beer manufactured by other brewers.

Under the budget provision, a small brewer could choose whether to operate: (a) up to four restaurants at which it would have to offer beer from another brewer in addition to its own beer; or (b) up to 20 restaurants at which it could not sell its own beer. Other brewers would be allowed to operate up to 20 restaurants at which their beer could not be sold. These restaurants would be in addition to the two places allowed under the general provision of current law.

Conference Committee/Legislature: Adopt the provision with a modification to specify that a brewer could possess or hold an indirect interest in a Class "B" license for up to 20 restaurants.

[Act 16 Sections: 2805g and 2805h]

11. MUNICIPAL LIQUOR LICENSE MODIFICATION

Senate/Legislature: Modify current statutes relating to quotas on "Class B" (on-premises) liquor licenses to provide that municipalities would qualify for additional liquor licenses at a rate of one for each increase of 500 in the municipality's officially recorded population. Current

law allows an additional license on the basis of one per each increase of 500 population or fraction thereof.

[Act 16 Sections: 2812se thru 2812sg and 9344(24d)]